January 22/1872
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 83.

ARCHIBALD M. PENTZ, JACOB PENTZ, JOHN S. WILLIAMS, WILLIAM H. GUION, JANE A. CURTIS, AND WILLIAM J. McDONALD, APPELLANTS,

vs.

THE STEAMER ARIADNE, HER ENGINE, MACHINERY, ETC., CHARLES MALLORY, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Reverse — Divide Collision

FILED NOVEMBER 3, 1870.

8 Wall Supl
Jan'y 24 1872
Decree reversed
Interlocutory

SUPREME COURT OF THE UNITED STATES.

No. 83.

ARCHIBALD M. PENTZ, JACOB PENTZ, JOHN S. WILLIAMS, WILLIAM H. GUION, JANE A. CURTIS, AND WILLIAM J. McDONALD, APPELLANTS,

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Clerk's certificate	a	1
Libel	1	1
Stipulation for libellants' costs	9	3
Consent for substitution of proctor	11	4
Stipulation	13	4
Amended libel	15	5
Monition	21	6
Petition and notice of motion	23	7
Order	29	9
Consent to insert names of appraisers	33	10
Appraisers' oath	35	11
Appraisers' report	37	11
Claim of Charles Mallory	39	12
Stipulation for claimants' costs	43	13
Stipulation for claimants' costs	45	13
Stipulation for value	47	14
Order to discharge on bonding	49	16
Answer	51	16
Order of substitution of proctor for claimants	59	19
Affidavit and notice of motion to consolidate, &c	61	20
Order to try causes together	65	21
Petition and order, &c	67	21
Cause heard	73	23
Testimony of Sidney Ashby	76	25
Ezekiel H. Davis	77	26
Dexter H. Walker	77	[illegible]

	Original.	Print.
Testimony of Geo. W. Mayhew	79	26
Sidney Ashby, (recalled)	82	27
John Richard Williams	85	27
William Oakley	103	32
Griffith Jones	121	38
Sidney Ashby	137	42
Peter Gray	161	48
Charles Greene	173	51
Peter Oelsen	185	55
Thomas Libby	189	56
Consent to examine witnesses, de bene esse	195	57
Testimony of Nathan B. Pharo	197	58
Antonio Hendrickson	205	60
William Malloney	212	63
Abraham G. W. Rankin	215	64
Isaac T. Wolff	217	64
Amos Ryley	219	65
George B. Crary	227	67
Handford Nichols	231	69
Deposition of John A. Morgan	237	71
Certificate of commissioner	245	73
Deposition of John Morgan	247	74
Final decree: libel dismissed with costs	261	78
Notice of appeal	263	78
Petition of appeal	265	79
Bond for costs and damages on appeal	269	80
Cause heard	271	81
Decree of affirmance	275	82
Final decree	277	82
Petition on appeal	279	83
Bond for costs and damages	283	84
Citation	285	85
Case	287	86

a UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 286, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Archibald M. Pentz against The Steamer Ariadne, her engine, tackle, &c., as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 21st day of October, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-c't int. rev. stamp, canceled.]

1 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Tuesday the 23d day of June, in the year of our Lord one thousand eight hundred and sixty-eight—

Present, the Honorable Samuel Blatchford, dist. judge.

ARCHIBALD M. PENTZ & OTHERS
vs.
THE STEAMER ARIADNE, HER ENGINE, TACKLE, &C. } 19—457.

1865, December 16th. The libellants file their libel against the above-named steamer, her engine, machinery, boats, tackle, apparel, & furniture, in the words and figures following, to wit:

2

3 In admiralty.

To the judge of the district court of the United States for the southern district of New York:

Archibald M. Pentz & Jacob Pentz, constituting the firm of Pentz Brothers, of the city of New York, merchants, and William Edwards, of the same place, John T. Williams, of the same place, William H. Guion, of the same place, Jane H. Cortes, of Brooklyn, and William I. Donald, of the city of New York, on behalf of themselves as owners of the brig William Edwards, hereinafter more particularly mentioned, and also on behalf of certain persons hereinafter named, having property on board the said brig, which was lost by the collision hereinafter stated, exhibit this their libel against The Steamer Ariadne, whereof is now, or late was, master, her engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, and allege as follows:

First. That, at the time of the collision hereinafter next stated, the libellants were the owners of the brig William Edwards, of which Sidney Ashdey was then master, to wit: The said Pentz Brothers were the

owner of one-eighth thereof; said William Edwards was the
4 owner of three-eighths thereof; the said John S. Williams was the owner of one-eighth thereof; the said William H. Guion was the owner of one-eighth thereof; the said Jane H. Cortes was the owner of one-eighth thereof, and said William I. Donald was the owner of one-eighth thereof.

Second. That, on the night of the 13th of December, instant, at about eleven o'clock of that night the said brig William Edwards, then on a passage from Havre to New York, had arrived off the port of New York, and had taken a pilot on board, and was then in the open sea, about twelve miles distant from Barnegat, and about eight miles from the land, steering for said port of New York, when the said steamer Ariadne was seen approaching said brig, said steamer being then about three miles off; that said brig was at the time close-hauled to the wind, and, having all her lights displayed as required by law, kept steadily on her course; but the said steamer continued to approach said brig till finally, apparently without noticing said brig or her lights, or the hails from her which *was* given by the look-out upon said brig, she came in collision with said brig, striking her on the starboard quarter with such violence that said brig was greatly damaged thereby, and immediately commenced filling with water, and in less than an hour
5 from the time of such collision she sank in the sea and was wholly lost.

Third. The value of said brig, at the time of such collision, was forty thousand dollars. The libellants were also owners of the freight then in course of being earned by said brig, on her said passage from Havre to New York, to the amount of thirty-five hundred dollars, all of which was totally lost to them by said collision, making the damage, from said collision, in the aggregate, *thirty*-three thousand five hundred dollars to these libellants. In addition to which, the following-named persons had property on the said brig, at the time of the said collision, which was thereby totally lost, which said property was of the value below stated, not at the time in the possession of these libellants as the carriers thereof, and for which the said persons desire that a recovery should be had in this cause, to wit:

1. Horatio N. Slater, Lydia R. Slater, and William P. Slater, composing the firm of Samuel Slater & Sons, merchandize of the value of fifteen thousand dollars.

2. Newry W. Gray, merchandize of the value of four hundred dollars.

3. Sidney Ashbey, the master of the said brig, personal property of the value of one *hundred* dollars.

4. John Richard Williams, mate of the said brig, personal property of the value of three hundred dollars. So that the en-
6 tire amount for the recovery, of which this cause is maintained, is sixty thousand two hundred dollars.

Fourth. Such collision occurred wholly through the fault of said steamer, and without any fault of said brig.

Fifth. Said steamer is now lying in the port of New York, within the jurisdiction of this court.

Sixth. Since said collision the libellants have, in a friendly manner, applied to the owner of said steamer for reparation for the damage suffered by them by such collision, which has been refused by him.

Seventh. All and singular the above allegations are true.

Whereupon your libellants pray that process, in due form of law, may issue against said Steamer Ariadne, her engine, machinery, boats, tackle, apparel, and furniture, and that this honorable court will pro-

nounce for the damages aforesaid, and decree the same to be paid with costs, and for such further or for such other relief and redress as to right and justice may appertain, and the court is competent to give in the premises.

7 ARCH. M. PENTZ.

A. C. MORRIS, *Proctor for Libellants.*

Sworn before me, by Arch'd M. Pentz, this 16th day of December, 1865.

[SEAL.] A. C. WILLMARTH,
Notary Public.

[Int. rev. 5-c. stamp, cancelled.]

(Endorsed:) U. S. district court. 19—347. Archibald M. Pentz & others v. The Steamer Ariadne, her engine, &c. Libel. A. C. Morris, proctor for libellants. Filed Dec. 16, 1865.

8

9 *Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the 16th day of December*, 1865.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the sixteenth day of December, in the year of our Lord one thousand eight hundred and sixty-five, by Archibald M. Pentz & others against The Steamer Ariadne, her engines, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamer, her tackle, &c., may be condemned and sold to pay the demands of said libellants; and the said libellant and John S. Farren, surety, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred & fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred & fifty dollars, conditioned that the libellants above named, shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

ARCH'D M. PENTZ.
JOHN S. FARREN.

Taken and acknowledged this 16th day of December, 1865, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John S. Farren, party to the above stipulation, being duly sworn, doth depose and say that he resides in the eastern district of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

JOHN S. FARREN.

Affirmed to this 16th day of December, 1865, before me.
GEO. F. BETTS,
U. S. Commissioner.

Recorded the 16th day of December, 1865.
G. F. B., *Clerk.*

10

11 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Monday, the 18th day of December, in the year of our Lord one thousand eight hundred and sixty-five—

Present, the Honorable Samuel R. Betts, district judge.

ARCHIBALD M. PENTZ & OTHERS
vs.
THE STEAMER "ARIADNE," HER ENGINES, &C.

On reading and filing a consent, signed by A. C. Morris, proctor for the libellants, and on motion of Man & Parsons, esq'r's, it is ordered that they be, and are hereby, substituted as proctors for the libellants in the place and stead of A. C. Morris.

I hereby consent that Man & Parsons, esq'r's, be substituted in my place as proctor in this cause, and that an order be entered herein therefor.

Dec'r 16th, 1865.

A. C. MORRIS,
Proctor for Libellants.

Filed December 18, 1865.

12

13 United States district court for the southern district of New York.

ARCHIBALD M. PENTZ ET AL.
ag'st
THE STEAMER ARIADNE, HER ENGINE, MACHINERY, BOATS, &c.

It is hereby stipulated and agreed that the libel in this cause be amended so as to correspond with the copy amended libel hereto annexed, and to be filed herewith; that the two additional passages, to make the libel correspond with the annexed amended libel be added to the original libel without further verification, and with like effect as if the same had been originally incorporated therein; and that an order be entered accordingly.

New York, Dec. 29, 1865.

OWEN, GRAY & OWEN,
Proctor' for Claimants.
MANN & PARSONS,
Proctor' for Libellants.

14

15 In admiralty.

To the judge of the district court of the United States for the southern district of New York:

Archibald M. Pentz and Jacob Pentz, constituting the firm of Pentz Brothers, of the city of New York, merchants, William Edwards, of the same place, John S. Williams, of the same place, William H. Guion, of the same place, Jane H. Cortis, of Brooklyn, and William J. Donald, of the city of New York, (on behalf of themselves as owners of the brig William Edwards, hereinafter more particularly mentioned, and also on behalf of certain persons hereinafter named, having property on board the *the* said brig, which was lost by the collision hereinafter stated,) exhibit this their bill, against The Steamer Ariadne, whereof Cary is now, or lately was, master, her engine, machinery, boats, tackle, apparel, and furniture; and against all persons lawfully intervening for their interests therein, in a cause of collision, civil and maritime, and allege as follows:

First. That, at the time of the collision hereinafter next stated, the libellants were the owners of the brig William Edwards, of which
16 Sidney Ashley was then master, to wit, the said Pentz Brothers were the *the* owners of one-eighth thereof; said William Edwards was the owner of three-eight's thereof; the said John S. Williams was the owner of one-eighth thereof; the said William H. Guion was the owner of one-eighth thereof; the said Jane H. Cortis was the owner of one eighth thereof; and William J. Donald was the owner of one-eighth thereof.

Second. That, on the night of the 13th of December, 1865, instant, at about eleven o'clock of that night, the said brig William Edwards, then on a passage from Havre to New York, had arrived off the port of New York, had taken a pilot on board, and was then in the open sea about twelve miles distant from Barnegat, and about eight miles from the land, steering for said port of New York, when the said steamer "Ariadne" was seen approaching said brig, said steamer being then about three miles off; that said brig was at the time close-hauled to the wind, and, having all her lights displayed as required by law, kept steadily on her course; but the said steamer continued to approach said brig, or her lights or the hails from her which were given by the look-out
17 upon said brig, striking her on the starboard quarter with such violence, that said brig was greatly damaged thereby, and immediately commenced filling with water, and, in less than an hour from the time of such collision, she sunk in the sea and was wholly lost.

Third. The value of said brig at the time of such collision was forty thousand dollars. The libellants were also owners of the freight then in course of being carried by said brig, on her said passage from Havre to New York, to the amount of thirty-five hundred dollars, all of which was totally lost to them by said collision, making the damage from said collision, in the ag'r'gate, forty-three thousand five hundred dollars to these libellants. In addition to which the following persons had property on the said brig at the time of the said collision, which was thereby totally lost, which said property was of the value below stated, was at the time in the possession of these libellants as the carriers thereof, and for which the said persons desire that a recovery should be had in this cause, to wit:

1. Horatio N. Slater, Lydia R. Slater, and William S. Slater, compos-

ing the firm of Samuel Slater and Sons, merchandize of the
18 value of fifteen thousand dollars.

2. Henry W. Gray, merchandise of the value of four hundred dollars.

3. Sidney Ashby, the master of the said brig, personal property of the value of one thousand dollars.

4. John Richard Williams, mate of the said brig, personal property of the value of three hundred dollars.

So that the entire amount, for recovery of which this cause is maintained, is sixty thousand and two hundred dollars.

Fourth. Such collision occurred wholly through the fault of said steamer, and without any fault of said brig.

Fifth. Said steamer is now lying in the port of New York, and within the jurisdiction of this court.

Sixth. Since said collision the libellants have, in a friendly manner, applied to the owner of said steamer for reparation for the damages suffered by them by such collision, which has been refused by him.

Seventh. All and singular the above allegations are true.

Wherefore your libellants pray that process in due form of law
19 may issue against said Steamer Ariadne, her engine, machinery, tackle, apparel, & furniture, and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid, with costs, and for such further or such other relief and address as to the right and justice may appertain, and the court is competent to give in the premises.

ARCH'D M. PENTZ.

A. C. MORRIS,
Proctor for Libellants.

Sworn to before me, by Arch'd M. Pentz, this 16th day of December, 1865.

[SEAL.] A. C. WILLMARTH,
Notary Public.

[U. S. 5-c't inte. rev. stamp, cancelled.]

(Endorsed:) 19—347. U. S. district court. Archibald M. Pentz et al. vs. Steamer Ariadne, her engine, &c. Amended libel. Man' & Parsons libel'ts proct's, 64 Wall st., N. Y. Filed December 29, 1865.

20

21 SOUTHERN DISTRICT OF NEW YORK, *ss:*

[L. S.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the sixteenth day of December, in the year of our Lord one thousand eight hundred and sixty-five, by Archibald M. Pentz and Jacob Pents, & others, against The Steamer Ariadne, her tackle, engines, &c., &c., (collision, $43,500 00,) for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and, all proceedings being had, that the said steamer or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants:

You are therefore hereby commanded to attach the said steamer or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 2d day of January, 1866, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this sixteenth day of December, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth.

GEO. F. BETTS, *Clerk.*

A. C. MORRIS,
Proctor for Libellant.

[U. S. 50-c. int. rev. stamp, cancelled.]

(Indorsed:) Vol. 19, page 347. Southern district of New York. United States district court. Archibald M. Pentz & others vs. The Steamer Ariadne, her engines, tackle, &c. Monition ret'ble Jan'y 2d, 1866. A. C. Morris, proctor for libellants. Filed January 2d, 1866.

I hereby depute L. Bates to execute the within process.
Dated Dec'r 16th, 1865.

R. MURRAY,
U. S. Marshal.

22 In obedience to the within monition, I attached the st'r Ariadne, &c., therein described, on the 16th day of December, 1865, and have not given due notice to all persons claiming the same, that this court will, on the 2d day of January, 1866, inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY,
U. S. Marshal.

Dated Jan'y 2, 1866.

23 District court of the United States for the southern district of New York in admiralty.

ARCHIBALD M. PENTZ & OTHERS
vs.
THE STEAMER "ARIADNE," HER ENGINES, machinery, &c.

To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The petition of Charles Mallory respectfully showeth:

That, on the night of the 13th December instant, a collision occurred

in the waters of the Atlantic, on the New Jersey coast, between the steamer "Ariadne," an American vessel of which your petitioner is owner, and the American brig "William Edwards," then on a voyage to the port of New York from Havre, with cargo on board.

That, in consequence of such collision, the said brig "William Edwards" filled with water, and soon afterwards is supposed to have gone down, and no part of her cargo, so far as your petitioner is informed, has been saved.

That such collision occurred without the privity or knowledge of your petitioner.

24 That, on the 16th day of December instant, the original libel herein was filed and an attachment issued at the instance of the libellants under which the said steamer "Ariadne" was seized by the marshal and is now in the custody of this court.

That the said steamer "Ariadne" was freighted with a cargo for Apalachicola, upon which, if she had performed her voyage, the gross freight, together with passage-money, would have amounted to about $6,500, but she had just left her port of departure, and after said collision was obliged to return to said port to make repairs.

Your petitioner further shows that the owners of the said brig "William Edwards" allege in their libel herein that her value at the time of said collision was $40,000, which amount, with the $3,500 freight-money, they claim to recover; and your petitioner is informed and believes that the cargo was of considerable value which was on board said brig when she went down, and the total value of said brig, freight, and cargo, is said to be over $150,000, an amount greatly exceeding the value of the said steamer "Ariadne" and her freight then pending, and your

25 petitioner apprehends that, in addition to the claim made by the libellants, other claims on behalf of the owners of such cargo will be made against him as owner, or against said steamer, her engines, &c.

Your petitioner therefore prays that he may be declared entitled to the benefit of the act of Congress, passed March 3d, 1851, limiting the liability of owners of vessels in cases of collision; that the said steamer, her engines, &c., and her freight pending at the time of the said collision may be appraised by appraisers to be appointed by this court; that your petitioner may be authorized to give a stipulation with good and sufficient sureties according to the rules and practice of this court for such appraized value, such stipulation to be for the benefit of the libellants herein, and in case they shall establish the liability of said steamer, of all other claimants who may intervene and prove to be legally entitled to receive compensation for losses sustained by reason of such collision, in proportion to the amount of the respective losses of all such claimants, and that upon the one execution of such stipulation

26 the said steamer, her engines, machinery, &c., as well as the owner thereof may be discharged from all liability by reason of such collision, and that he may have such other or further relief as may be just and proper in the premises.

CHARLES MALLORY.
By his att'y, C. H. MALLORY.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles H. Mallory, being duly sworn, says that he is the attorney-in-fact of Charles Mallory, the owner of the steamer "Ariadne," named in the above petition; that deponent has read the said petition, and knows the contents thereof; that he is personally co'nizant of the facts therein stated, and that the said petition is true of his own knowledge, except

as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

C. H. MALLORY.

Sworn to before me this 30th day of Dec., 1865.

W'M D. JONES,
Notary Public, N. Y. City.

27 U. S. district court.

ARCHIBALD M. PENTZ & OTHERS
vs.
THE STEAMER ARIADNE, HER ENGINES, MACHINERY, &c.

GENT'N: Please take notice that on the foregoing petition, and the claim herein, and the libel, and the amended libels, we shall apply to this court, at the court-rooms in the city of New York, on the first Thursday of January next, at the opening of the court, or as soon thereafter as counsel can be heard, for an order in accordance with the prayer of the petitioner.

Dated New York, December 30, 1865.

OWEN, GRAY & OWEN,
Resp'd't's Proct's.

To MAN & PARSONS, Esq's,
Libell'ts' Proct'rs.

(Endorsed:) 19—347. U. S. district court. Archibald M. Pentz
28 & others vs. The Steamer Ariadne, &c., &c. Petition & notice of motion. Owen, Gray & Owen, resp'd't's proctors. Filed Feb'y 13, 1866.

Due and timely service of a petition and notice, of which the within are copies, is hereby admitted.

New York, December 30th, 1865.

MAN & PARSONS,
Libel'ts' Proct's.

29 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Tuesday, the thirteenth day of February, in the year of our Lord one thousand eight hundred and sixty-six—

Present, the Honorable Samuel R. Betts, district judge.

THE STEAMER "ARIADNE," HER TACKLE, &C.,
Charles Mallory, cl't,
ads.
ARCHIBALD M. PENTZ & OTHERS, LIBELLANTS. } 19—347.

On reading and filing the petition of Charles Mallory, claimant of the above-named steamer "Ariadne," her engines, machinery, &c., and after hearing E. H. Owen, advocate for the said petitioner, and John E. Parsons, esq'r., in opposition,

It is ordered that the said petitioner, as owner of said steamer, be, and he is hereby, declared, in respect to the collision between said

steamer and the brig "William Edwards" in the libel set forth, entitled to the benefit of the act of Congress passed March 3d, 1851, so that the liability of the said petitioner is limited to the amount and value of the said steamer, her engines, machinery, &c., and to the amount or value of the freight pending at the time of said collision.

And it is further ordered that Richard Poillon, John Baird, and William W. Story be, and they are hereby, appointed to appraise the value of said steamer, her engines, machinery, &c., and the amount or value of her freight pending at the time of said collision; and that, upon the petitioner's giving a stipulation, with good & sufficient sureties, according to the rules and practice of this court, for such appraised value and amount, which stipulation is hereby declared to be for the benefit of the libellants herein, in case they shall establish the liability of the said steamer and of all other claimants, as well *as* those on whose behalf this cause is maintained as those who may intervene and prove to be legally entitled to receive compensation for losses sustained by reason of such collision, in proportion to the amount of the respective losses of all such claimants, the said steamer, her engine, machinery, &c., as well as the said petition', the owner thereof, may be discharged from all liability by reason of said collision.

And it is further ordered that the owners of the said brig "William Edwards," and all owners of cargo or property on board of said brig, and all other persons who may be entitled to intervene and claim compensation against the owner of said steamer Ariadne, her engines, machinery, &c., be, and they are hereby, declared to be bound by this order.

And it is further ordered that counsel will make application, according to the usual course of practice, for the designation of appraisers to make the valuation of the said vessel and the freight pending on board her at the time of the collision, mentioned in the aforesaid order.

SAM'L R. BETTS.

(Endorsed:) Vol. 19, No. 347. United States district court for the southern district of New York. The Steamer "Ariadne," her engines, &c., ads. Archibald M. Pentz & others. Order. Owen, Gray & Owen, proctors for *for* cl'm'ts. E. H. Owen of counsel. Filed the thirteenth day of February, 1866.

U. S. district court.

ARCHIBALD M. PENTZ & ALS.
vs.
THE STEAMSHIP "ARIADNE," &C.

It is hereby consented that the names of Richard Poillon, John Baird, and William W. Story be inserted in the order made and entered herein on the 13th day of February, as the appraisers appointed in conformity to the said order.

Feb'y 16, 1866.

MAN & PARSONS,
For Libel'ts.
OWEN, GRAY & OWEN,
Cl'ts Proct's.

(Endorsed:) 19—347. The Steamer Ariadne, &c., ads. A. M. Pentz & al. Consent to insert names of appraisers in order of Feb'y 12, 1866. Filed Feb'y 16, 1866.

34

35 United States district court, southern district of New York. In admiralty.

THE STEAMSHIP ARIADNE, HER TACKLE, ENgines, &c., & freight pending, &c., *ads.* ARCHIBALD M. PENTZ ET AL.

We, the undersigned, having been appointed appraisers to appraise the value of the above-mentioned steamship Ariadne, her engine, tackle, &c., and the value of the freight pending at the time of collision with the brig "William Edwards," do solemnly swear that we will faithfully appraise the same to the best of our skill and ability.

RICHARD POILLON.
JOHN BAIRD.
W'M W. STORY.

Subscribed and sworn to this 17th day of February, 1866, before me.
JOHN A. OSBORN,
U. S. Comm'r.

As to Richard Poillon.
GEO. F. BETTS,
U. S. Comm'r.

36 (Endorsed:) Vol. 19, page 347. United States district court, southern district of New York. In admiralty. The Steamer Ariadne, her tackle, engine, &c., and freight pending, &c., ads. Archibald M. Pentz & als. Appraisers' oath. Filed the 17th day of Feb'y, 1866.

37 United States district court, southern district of New York. In admiralty.

THE STEAMSHIP "ARIADNE," HER TACKLE, engine, &c., and freight, *ads.* ARCHIBALD M. PENTZ ET ALS. 19—347.

The undersigned, having been duly appointed and sworn as appraisers to appraise the value of the above-named vessel, her tackle, engine, &c., also the value of the freight, pending at the time of the collision with the brig "William Edwards," do report that we have examined and appraised the said steamer, her tackle, &', and also the freight, pending as aforesaid, and do find that the value of the above-named vessel, her tackle, engine, &c., is the sum of forty thousand dollars, ($40,000,) and the value of the freight, pending as aforesaid, is the sum of seven thousand seven hundred & five $\frac{70}{100}$ dollars, together amounting to forty-seven thousand seven hundred and five $\frac{70}{100}$ dollars, ($47,705 70.)

Dated New York, February 17th, 1866.

38 All which is respectfully submitted.

RICHARD POILLON.
JOHN BAIRD.
W'M W. STORY.

(Endorsed:) Vol. 19, page 347. United States district court, southern district of New York. In admiralty. The Steamer Ariadne, her tackle, engine, &c., & freight pending, ads. Archibald M. Pentz. Appraisers' report. Filed Feb'y 17, 1866.

39 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday, the third day of January, in the year of our Lord one thousand eight hundred and sixty-six—

Present, the Honorable Samuel R. Betts, district judge.

THE STEAMER ARIADNE, &c.,
asm.
ARCHIBALD M. PENTZ & AL.

And now Joseph H. Gray, intervening as agent for the interest of Charles Mallory in the said steamer, appears before the honorable court and makes claim to the said steamer, &c., as the same are attached by the marshal under process of this court at the instance of Archibald M. Pentz and others, and the said Joseph H. Gray avers that said Charles Mallory was in possession of the said steamer at the time of the attachment thereof, and that the person above named is the true and
40 bona-fide sole owner of the said steamer, and that no other person is the owner thereof; and the said Charles Mallory, the true and lawfull bailee thereof as such owner, wherefore he prays to defend accordingly.

JOSEPH H. GRAY.

OWEN, GRAY & OWEN,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph H. Gray, being duly sworn, deposes and says: That he resides at Elizabeth, in the State of New Jersey; that he is the agent of the owner of above-named steamer; that the owner of said steamer resides at Mystic, in the State of Connecticut, and that this deponent is duly authorized to put in this claim in behalf of the owner of said steamer; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he beleives it to be true.

JOSEPH H. GRAY.

Sworn to and subscribed this 3d day of January, A. D. 1866, before me.

JOHN A. OSBORN,
U. S. Commissioner.

41 (Endorsed:) Vol. 19, No. 347. United States district court for southern district of New York. The Steamer "Ariadne" asm. Archibald M. Pentz & al. Owen, Gray & Owen, proctors for claimant. Claim of Charles Mallory. Filed the third day of January, 1866.

42

43 Respondents' costs.]

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 3d day of January, 1866.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court, on the 16th day of December, in the year of our Lord one thousand eight hundred and sixty-five, by Archibald M. Pentz & others against the steamer "Ariadne," her engines, &c., for the reasons and causes in the said libel mentioned, and praying that the said steamer may be condemned and sold to pay the demands of the said libellants, and the parties hereto, hereby consenting, and that in case of default or contumacy on the part of the claimant or his sureties, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels and land;

And whereas, also, a claim has been filed in said cause by Charles Mallory:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal, by the appellate court.

CHARLES MALLORY,
By H. J. GRAY, *Att'y.*
A. F. HIGGINS.
W'M H. STANFORD.

Taken and acknowledged this 3rd day of January, 1866, before me.
JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Andrew F. Higgins and William H. Stanford, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the city of New York, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

A. F. HIGGINS.
W'M H. STANFORD.

Sworn to this 3rd day of January, 1866, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 3d day of January, 1866.
G. F. BETTS, *Clerk.*

44

45 Respondent's costs.]

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 17th day of February, 1866.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the sixteenth, & an amended

libel on the 29th day of December, in the year of our Lord one thousand eight hundred and sixty-five, by Archibald M. Pentz & others, against The Steamer Ariadne, her engines, &c., for the reasons and causes in the said libel mentioned, and praying that said steamer, &c., may be condemned and sold to pay the demand of said libellants, and the parties hereto hereby consenting, and that in case of default or contumacy on the part of the claimant or his sureties execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by Joseph H. Gray, agent for owner, (Charles Mallory:)

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the claimant above-named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal by the appellate court.

CHA'S MALLORY,
By C. H. MALLORY, *Agent.*
HIRAM BENNER.
JAMES D. FISH.

Taken and acknowledged this 17th day of February, 1866, before me.
JOHN A. OSBORNE,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Hiram Benner & James D. Fish, parties to the above stipulation, being duly sworn, doth each depose and say, that he resides in the eastern district of New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

HIRAM BENNER.
JAMES D. FISH.

Sworn to this 17th day of February, 1866, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 17th day of February, 1866.
G. F. BETTS, *Clerk.*

46

47 *Stipulation entered into pursuant to the rules and practice of this court.—Filed the 17th day of February,* 1866.

District court of the United States for the southern district of New York. In admiralty.

Whereas a libel was filed, on the sixteenth day of December, in the *in the* year of our Lord one thousand eight hundred and sixty-five, and an amended libel on the 29th day of December, 1865, by Archibald M. Pentz & others, against The Steamer Ariadne, her engines, tackle, &c., for the reasons and causes in the said libel & amended libel mentioned.

And whereas the said steamer Ariadne, her engines, &c., are in the custody of the marshal, under the process issued in pursuance of the prayer of said libel and amended libel; and whereas, by an order of the

court, under date of February 13th, 1866, the said steamer "Ariadne," her engines, &c., were appraised at the sum of forty thousand dollars, ($40,000,) and the freight pending at the time of the collision with the brig W'm Edwards was appraised at the sum of seven thousand seven hundred & five $\frac{70}{100}$ dollars, ($7,705 70,) and, together, amounting to the sum of forty-seven thousand seven hundred and five $\frac{70}{100}$ dollars, ($47,705 70,) and that said steamer Ariadne, her engines, &c., and freight, be discharged from custody upon the claimant executing a stipulation for value in such appraised amount, as appears from said appraisement & order now on file in said court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant or his sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall, at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Owen, Gray & Owen, esquires, proctors for the claimant of said steamer Ariadne, &c., abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

CHARLES MALLORY,
By C. H. MALLORY, *Agent.*
HIRAM BENNER.
JAMES D. FISH.

Taken and acknowledged this seventeenth day of February, 1866, before me.

JOHN A. OSBORNE,
U. S. Commissioner.

48 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Hiram Benner and James D. Fish, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he resides in the eastern district of New York, and that he is worth the sum of ninety-five thousand four hundred & twelve dollars, over and above all his just debts and liabilities.

HIRAM BENNER.
JAMES D. FISH.

Sworn to this seventeenth day of February, 1866, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded this seventeenth day of February, 1866.

GEO. F. BETTS, *Clerk.*

Sureties approved.

MAN & PARSONS,
Pr's Libell'ts.

FEB. 17, 1866.

49 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the seven-

teenth day of February, in the year of our Lord one thousand eight hundred and sixty-six—

Present, the Honorable Samuel R. Betts, district judge.

THE STEAMER "ARIADNE," HER ENGINES, &C., *ads.* ARCHIBALD M. PENTZ & OTHERS. } 19—347.

The appraisers, appointed by order of court entered herein, and filed the 13th day of February inst., to appraise the value of the above-named steamer, her engines, tackle, &c., and also the value of the freight pending at the time of the collision with the brig "William Edwards," having filed their report; and stipulations for costs and value, the latter in the appraised amount of vessel and freight pending as aforesaid, having been executed on the part of the claimant, and said stipulation having been approved by the proctors for the libellants: Now, on motion of Owen, Gray & Owen, proctors for the claimant, it is ordered that said steamer, her engines, tackle, &c., be discharged from custody, the stipulation for value to represent the vessel and freight pending as aforesaid in the above-entitled action.

50 And it is further ordered that the appearance of the claimant be, and the same is hereby, entered herein.

SAM'L R. BETTS.

(Endorsed:) Vol. 19, No. 347. United States district court for the southern district of New York. The Steamer "Ariadne," her engines, tackle, &c., ads. Archibald M. Pentz & others. Order to discharge on bonding, & ent. cl't's app'ce. Owen, Gray & Owen, proctor' for . Filed the seventeenth day of February, 1866.

51 To the Honorable Samuel R. Betts, judge of the district court of the United States within and for the southern district of New York:

And now, Charles Mallory, of Mystic, in the State of Connecticut, having duly filed his claim to the steamer "Ariadne," her engines, &c., &c., inter'ening for his interest therein, appears before this honorable court, and for answer to the amended libel and complaint of Archibald M. Pentz, Jacob Pentz, William Edwards, John S. Williams, William H. Guion, Jane N. Cortis, William J. Donald, in behalf of themselves as owners of the brig William Edwards, and of certain persons therein named having property on board of the said brig, (and which was lost by the collision in the said amended libel stated,) against the said Steamer "Ariadne," her engine, machinery, boats, tackle, apparel, &c., and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, alleges and propounds, first, and by way of a plea in abatement to the said action, as follows:

52 First. That at the time of the collision, in the amended libel stated, the said libellants had in their possession in and on board of the said brig, and as common carriers thereof, a large quantity of merchandize and property which was owned by and belonged to other parties than those particularly named in the said amended libel, (but whose names and residences are unknown to the claimant,) which was lost by the same collision in the amended libel stated, and the claimant insists that they had and have a common interest with the libellants to recover their damages in this action; that they are necessary and proper parties hereto as libellants, and should be either made co-libellants by

name, or the said amended libel should appear to be filed, and should be so in fact, and this action prosecuted in their behalf as well as in behalf of the libellants and of those persons in the said libel particularly named. The claimant, accordingly, insists that the libellants ought not further to have or maintain this action until such persons shall have been properly made co-libellants, or so brought before this court as to bind them by the decree which may be made herein.

53 Second. This claimant, without waiving his aforesaid plea, but still insisting thereon, for answer to the matters set forth in the said amended libel, says that he does not know who were the owners of the brig "Williams Edwards" and of the cargo on board thereof, and he therefore leaves the libellants to make such proof thereof as they may be advised.

Third. He admits that a collision did occur between the steamer "Ariadne" and the brig "William Edwards" on the night of the 13th December, 1865, at about eleven o'clock p. m., whereby the said brig with her cargo was totally lost, but he denies each and every of the other allegations contained in the second article of the said libel, except in so far as the same may be consistant with the facts and circumstances hereafter stated.

Fourth. He has no knowledge of the value of the said brig and her freight, but he believes that such value was not of the sums mentioned in the third article of the libel, and he therefore denies the allegations of the said article.

Fifth. He denies that the collision occurred through the fault
54 of the said steamer and without any fault of the said brig as alleged in the fourth article of the libel.

Sixth. He admits that, at the commencement of this action, the steamer was lying in the port of New York, and that the libellants have applied to him for reparation of their loss as alleged in the fifth and sixth articles; he also admits and says that he refused to make such reparation because, from the best information he could obtain in respect to the said collision, he believed and still believes and avers that the same was not caused by any fault on the part of the steamer.

Seventh. This claimant, upon information and belief, further says: That, at the time of the collision, the night was cloudy and dark; that the wind was from the north to north-northeast, and blowing a strong whole-sail breeze; that the steamer was well and sufficiently officered, manned, equip'ed and supplied for the voyage she had undertaken; that she had all her lights properly set and the same were burning brightly; that she had a competent look-out, stationed in the usual and proper place, who was faithfully and vigilantly attending to his
55 duty, and her officers and men were all at their proper stations and attending to their duty; that the said steamer was at the time bound to Apalachicola, Florida, with freight and passengers; that she had no sails set and was going at the rate of seven or eight knots an hour, heading south by west quarter west; that while so pursuing her voyage, Barnegat light bearing somewhere about southwest half south, the brig was discovered near to the steamer and a little on her port-bow, (no lights being visible,) heading towards the shore across the steamer's bows; that the steamer's bells were immediately rung to stop and back, and her wheel put hard-astarboard so as to go off under the stern of the brig; and although the engine was immediately stopped and reversed and the helm was put hard to starboard as quickly as possible, yet by reason of the proximity of the vessels, it was impossible to clear the brig and she was struck by the

THE SAME
ads.
THE ATLANTIC MUT. INS. CO. } No. 3.

THE SAME
ads.
JAMES M. SHAW & ALS. } No. 4.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph H. Gray, being duly sworn, says that he is one of the proctors for the claimants in the above entitled causes.

That the claims of the libellants in each of the above causes arise out of one and the same collision, and the testimony in either suit is applicable, so far as respects the liability, to all; and, accordingly, a stipulation has been entered into by and between the proctors of
62 the respective parties in the last three above-entitled causes, that the testimony taken in the first should be read and used as evidence in such causes; that the stipulation given upon the discharge of the steamer from arrest was to enure to the benefit of all persons having claims against the said steamer arising out of the said collision; that, from these and other facts and circumstances appearing by the pleadings and proceedings in the above-entitled causes, this deponent is advised and believes that the ends of justice will be promoted by consolidating these causes and having them tried together as one cause, *and having them tried together as one cause.*

JOSEPH H. GRAY.

Sworn before me this 21st day of April, 1868.
[SEAL.] EDWARD L. OWEN,
Notary Public N. Y. Co.

GENTLEMEN: That upon the affidavit, with a copy of which you are herewith served, and upon the process, pleadings, and proceed-
63 ings in each of the above-entitled causes, we shall move this honorable court, at its court-room in the city of New York, on Saturday, the 25th day of April instant, at the opening of the court on that day, or as soon after as counsel can be heard, for an order that the above causes be consolidated, and be tried together as one cause, and for such further or other order as the case may require, and as shall be agreeable to the practice of the court.

New York, April 21, 1868.

Yours, &c.

OWEN, NASH & GRAY,
Proc's for Cl't.

To MAN & PARSONS, Esq'r's,
Proctors for Libel'ts in the 1st above cause.
SCUDDER & CARTER, Esq'r's,
Proctors for Libellants in the 2d & 3d causes.
RICHARD EMMET, Esq.,
Proctor for Lib'el'ts in the 4th cause.

(Endorsed:) 19—347. U. S. district court. The Steamer
64 "Ariadne," &c., Charles Mallory, cl'm't, ads. Archibald M. Pentz, & 3 other suits. Affidavit & notice of motion to consolidate, &c. Owen, Nash & Gray, proctors for claimants. Service admitted April

21, 1868. Scudder & Carter, Man & Parsons, att'ys Pentz. R. S. Emmet. Filed April 25, 1868.

65 At a stated term of the district court of the United States within and for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and sixty-eight—

Present, the Honorable Samuel Blatchford, district judge.

THE STEAMER ARIADNE, HER ENGINES, &C., Cha's Mallory, cl't, *ads.* ARCHIBALD M. PENTZ. } 19—347.

THE SAME *ads.* THE MERCANTILE MUT. INS. CO. } No. 2. 19—456.

THE SAME *ads.* THE ATLANTIC MUT. INS. CO. } No. 3. 19—455.

THE SAME *ads.* JAMES M. SHAW & ALS. } No. 4. 20—19.

66 On reading and filing affidavit and notice of motion, with due proof of the service thereof upon the proctors for the libellants in each of the above-entitled causes, and, on motion of E. H. Owen, esq., advocate for the claimant in each of the said causes, and, after hearing advocates for the libellants therein, and, it appearing that each of the above causes is brought to recover dam'ges occasioned by one and the same collision:

It is thereupon ordered that the above causes *to* be tried together at the same time, the evidence taken or to be taken in any one or more of the cases to be considered as taken in all of them.

SAM'L BLATCHFORD.

(Endorsed:) 19—34. U. S. district court. The Steamer Ariadne, &c., Charles Mallory, cl't, ads. Archibald M. Pentz and 3 other suits. Order to try causes together. Owen, Nash & Gray, proctors for claim'ts.

We consent that the within order be entered.

MAN & PARSONS,
Proctors Libel'ts in suit No. 1.
R. J. EMMET,
Proctor, &c.

Filed April 25th, 1868.

67 To the Honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The petition of Edmund Willetts, Joseph Willets, and Salmon S. Jackson, of the city of New York, respectfully sheweth:

That your petition's are residents of Long Island, in the State of New

York, and, at the times hereinafter mentioned, were partners engaged in business in *in business* the city of New York; that there is now pending before this honorable court a suit brought in the name of Archibald M. Pentz et al. against the steamer "Ariadne," her tackle, &c., to recover damages for a collision which occurred on December 13, 1865, between the said steamer and the brig "William Edwards;" that one Charles Mallory has inter'ened as claimant of the said steamer, and that, on the application of said Mallory, it has been ordered by this court that the value of said steamer and her freight pending at the time of the collision be appraised, and that the vessel be discharged on claimants giving a stipulation in such appraised value, and such stipulation is, by
68 the said order, declared to be for the benefit of the libellants and all others who may intervene and prove to be legally entitled to receive compensation for losses occasioned by such collision. And it is also therein further ordered, that the owners of the brig, and all owners of the cargo or property on board, and all other persons who may be entitled to intervene and claim compensation against the owner of the "Ariadne," are declared to be bound by the said order. (Vide rough minutes of court, No. 21, page 546.)

That your petitioners were the owners of a certain large quantity of china of the value of $18,000, which formed part of the cargo of the said brig on her voyage between New York and Havre, and which formed part of her cargo at the time of the said collision, and which was destroyed and lost by reason thereof.

And your petitioners further show that the said collision was occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said steamer "Ariadne," and not by or through any fault, negligence, or improper conduct on the part of the persons on board the said brig, her master and crew, as your petitioners
69 are informed and verily believe, and as is more fully alleged and set forth in the libel now on file in the said pending suit, to which libel and the allegations therein contained, your petitioners would refer.

Your petitioners therefore respectfully pray that, in accordance with the rules and practice of this honorable court, (Admiralty rules, XXXIV, New York district court rules, No. 10,) they may be admitted by the court to be heard for their own interests in the res, now within the control of the court in the above-entitled cause, and represented by the said stipulation of the claimant thereon; and that they may be allowed to prosecute as co-libellants in the said suit, and to share the benefit of the said stipulation in the proportion of the compensation which they may prove to be entitled to receive from the owners of the "Ariadne" and the stipulators in the said bond, for losses occasioned by the said collision; and that they may have such other and further relief as in law and justice they may be entitled to receive.

E. & J. WILLETTS & CO.,
By JOSEPH WILLETTS.

Affirmed before me this 13th day of May, 1868.
EDWIN F. COREY, JUN'R,
Notary Public City of New York.

70 We hereby consent to the entry of the following order on the filing of the foregoing petition.
Dated New York.

Proctor for Claimants Steamer Ariadne.

At a stated term of the district court of the United States for the southern district of New York, held at No. 41 Chamber street, in the city of New York, on the 18th day of May, 1868—

Present, the Hon. Samuel Blatchford, judge.

ARCHIBALD M. PENTZ ET AL.
against
THE STEAMER "ARIADNE," &C.

On reading and filing the foregoing petition of Edmund Willets, Joseph Willetts, and Solomon S. Jackson, of the city of New York, and, after hearing John E. Parsons for the said petitioners, appearing also for the above-named libellants; Mr. E. H. Owen appearing for the claimants herein, and Messrs. Townsend Scudder, Richard S. Emmet, and Alfred L. Edwards, appearing, respectively, for the Atlantic
71 Mutual Insurance Company, the Mercantile Mutual Insurance Company, James M. Shaw, and the Pacific Mutual Insurance Company, who also have petitioned to be admitted as co-libellants herein—

It is ordered that Edmund Willetts, Joseph Willets, and Solomon S. Jackson, petitioners aforesaid, be allowed to prosecute as co-libellants in this suit, and to be heard for their claim against the said steamer "Ariadne," by reason of the collision in the libel stated, upon the allegations of the said libel and of the said petition, and upon the evidence to be adduced in support thereof; and that all questions between the said several claimants as to the order of priority of payment between them out of the said steamer or her proceeds, or any stipulation filed therefor, be reserved.

SAM'L BLATCHFORD.

(Endorsed:) U. S. district court southern dist. of N. Y. The Steamer "Ariadne" ads. Archibald M. Pentz et al. Petition and order admitting E. & J. Willetts & Co. as co-libellants. Man & Parsons, proc-
72 tors for pet'rs, 64 Wall st. Filed May 18th, 1868.

73 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the 18th day of May, in the year of our Lord one thousand eight hundred and sixty-eight—

Present, the Honorable Samuel Blatchford, district judge.

ARCHIBALD M. PENTZ ET AL.
vs.
THE STEAMER "ARIADNE," HER TACKLE, &C. } 19—347.

This cause being called in its order on the day docket, ordered hearing.

Mr. Parsons reads petition of Edmund Willetts and others, and moves for their admission as co-libellants in this action. Motion granted.

Mr. E. H. Owen moves that this cause be consolidated with 3 other actions against said vessel.

Messrs. Scudder & Emmet opposed the motion.

The court intimated that the 3 causes referred to, were not properly in court, and that it had no jurisdiction over them.

Whereupon Mr. Scudder applied for leave to present a petition to have the libellants in said 3 causes made co-libellants in the above suit, and the court granted the application.

(Petition and order to be filed.)

Pleadings in the 4 actions read.

Evidence for libellants, Pentz & al.:

74 Deposition of John R. Williams read, causes adj'd, to follow that of Crawford v. St'boats New Haven & America.

May 20th, 1868. Cause continued.

Evidence for libellant:

Deposition of William Oakley.....read.
" " Griffith Jones..... "
" " Sidney Ashby..... "
" " Peter Gray..... "
" " Charles Greene..... "
" " Thomas Libby..... "
" " Peter Olden..... "

Evidence for claimants:

Deposition of Nathan B. Pharo.....read.
" " Antonio Hendrickson..... "
" " William Mallory..... "
" " Abraham G. W. Rankin..... "
" " Isaac T. Wolff..... "
" " Amos Riley..... "
" " George B. Crary..... "
" " John A. Morgan..... "
" " Hanford Nichols..... "

Evidence for co-libellant, (J. M. Shaw:)

Bill of lading.....read.

Cause adj'd to 11 a. m., to morrow.

May 21, 1868. Cause continued.

Evidence for libellants, Pentz & al.:

Hypolite Dardonville.....sworn.
Sidney Ashby..... "

Evidence for insurance companies (co-libellants:)

Ezeziel H. Davis..... "
Dexter H. Walker..... "

Evidence for libellants, Pentz & al.:

George W. Mahew..... "

Mr. Donohue argues for claimants.
Mr. Scudder " " libellants.
Mr. Owen " " claimants.
Cause adj'd to 11 a. m. to morrow.

May 22d, 1868. Cause continued.
Mr. John E. Parsons argues for libellants.
C. A. V.

75 *Judge's (Blatchford's) minutes of testimony.*

ARCHIBALD M. PENTZ
vs.
THE STEAMER ARIADNE, HER ENGINES. } And 5 other cases.

MAY 18, 1868.

Mr. Parsons for libellant.
Libel read.
Libel read in three other cases, Shaw, Merc. Mutual, Atlantic Mutual.
Answers read in 4 cases.
Also, case of Willetts & others.
Also, case of Pacific Mutual Ins. Co.
Deposition of John Richard Williams, mate of the brig William Edwards.

MAY 20TH, 1868.

Evidence for libellants:
Deposition of William Oakley, watch on William Edwards.
" " Griffith Jones, at wheel of W. E.
" " Sidney Ashby, capt. of W. E.
" " Peter Gray, steward of W. E.
" " Charles Green, 2d mate of W. E. below.
" " Peter Olsen, hand on W. E. "
" " Thomas Libby, hand on W. E. "

76 Evidence for claimants:

Deposition of Nathan B. Pharo, 2d mate of A.
" " Antonio Hendrickson, look-out.
" " William Mallory, at wheel.
" " Abraham G. W. Rankin, engineer.
" " Isaac T. Wolff, in engineer's room.
" " Amos Ryley, seaman on deck.
" " George B. Crary, master.
" " Hanford Nicoll, mate.
" " John A. Morgan, look-out on the W. E.
On behalf of James M. Shaw, bill of lading offered, 11 cases of merchandise, rec'd in evidence.

MAY 21, 1868.

For libellant:
HIPPOLYTE DARDONVILLE, (sworn.)
Dealer in lamps and oil. I knew rape-seed oil; I import it myself; it is in quality equal to pure sperm oil; it is the best know in European market; it is the only oil used in French navy; Government of the U. S. begin to use it in light-houses on lakes.

SIDNEY ASHBY, (sworn.) Master of W. E. I have heard read
77 deposition of John Morgan. I remember his examination in Mr. Owen's office in New York; I did not influence him to make the statements of that examination.
(Red lantern shown, (18 holes in bottom—small.)
This has not been cleaned for 2 years—on ship kept bright. I see no mark of smoke on the glass—see dirt and dampness. I tried to get lantern after collision. Saw Mallory.

EZEKIEL H. DAVIS, (sworn.) In adjusting department of Atlantic Insurance Co.; Co. had insurance on cargo in W. E.; proofs of loss shown and assignments; Co. paid loss to various parties, and took assignments of claims.

DEXTER H. WALKER. In adjusting department of Merchantile Mutual Ins. Co; it had insurance on cargo in W. E.; proofs of loss shown, and assignments; company paid loss to various parties and took assignments of claims.

Admitted by claimants that Pacific Mutual Insurance Com-
78–79 pany had insurance on cargo in W. E., paid loss to various parties, and took assignments of claims.

On behalf of E. & I. Willets & Co., bills of lading for 32 and 79 hogsheads of china, received in evidence.

GEORGE W. MAYHEW sworn:

Pilot; charge of W. E. at collision; know Mallory, claimant; not seen him in reference to matter; no conversation with him; seen nobody representing him in reference to matter. I was on brig's quarter-deck when A's lights first seen; first saw lights about 10 minutes before collision; they bore about N. ½ W. of us, a little forward of beam; our cou'se not changed down to collision; I came on board about ½ past 5; I had been on quarter-deck about an hour immediately before collision; I was astern of brig's lights; brig had side-lights; they were set in boxes, as they generally have them; box has a back-board and an in-board and board underneath. The lanterns were taken out of the side boxes during the evening before the collision; they were replaced; the green light was replaced about 20 minutes before collision; while down
80 it was taken to cabin; I did not see what was done to it while it was there; I saw it when brought back; it was burning; I did not go forward of it after that; breeze about 4½ knots; not under full sail; kept full and bye; course about W. N. W.; wind N., 6 points off.

Cross-examined:

The lights were taken down twice; taken down to trim them; they were smoked when taken down; I mean smoke on glass; I saw it come out of cabin second time; it was burning very high; when taken down to be taken into cabin, it was very nigh out; I went in boat with red light to steamer; it was dim; it didn't get out before we got to steamer; after we got there, don't know. Mate said something about oil and character of light when he took it down.

What did he say?

(Ruled out.)

Re-direct:

For ¾ hour before collision, I did not remain in one place; was down below; walked to leeward; also to windward; when green light
81 taken down I was just to windward of man at helm, starboard side; companion-way to cabin was, I think, on port side; mate came around by me with light; he returned same way; he stopped; lantern was shut both times; I said something to him, as he came back.

Cross-examined:

The light was flaring up; it was unusually flaring for lights of that character; this was the green light; I thought it flaring from looks of light through glass.

(Objected to.)

As mate came up from cabin with green light, and went by me, I told him that light flaring up, and if burned that way, it would smoke and be dim; he told me it was good enough. I have been paid my pilotage by owners of brig.

Re-direct:

I made a written statement in regard to circumstances of this collision. This is my signature. I gave no order from time steamer's lights first seen to collision; I gave no direction to anybody to do anything—not directly; after steamer almost close aboard of us, say about 800 yards off, I gave direction to man at helm as to wheel; also gave
82 another order to man at wheel; these were the only directions I gave from time steamer hove in sight to collision. I did not say, at Johnson and Higgins' office, that both of the lights were burning brightly at collision.

SIDNEY ASHBY recalled:

Have been using side-lights not more than six or seven years; have tried to keep informed as to best description of lanterns; no better lantern than this at the time of collision; use of light in lantern will create lampblack in any lantern with any oil; in these lanterns, draft good; sometimes too much; circulation good; sometimes put canvass around top of weather-lantern, in gale of wind; wind that night not such as to require anything of the kind; good night for lights to burn; that night clear air. I saw port-light burning ¼ mile off from steamer.

Cross-examined:

Was ten or fifteen minutes rowing from steamer to my brig, and same time back.

83 Mr. Donohue for claimants.
Mr. Scudder for libellants.
Saxonia, 1 Lushington, 410.
Velazquez. Eng. Law Rep. 1, P. C.
Mr. Owen for claimants.
Burden of proof. If bark no light, and that might have caused collision, burden is on bark to show fault in steamer.
No complaint of steamer; she had a look-out.

MAY 22, 1868.

Mr. Parsons for libellant.

84

85 U. S. district court.

ARCHIBALD M. PENTZ ET AL.
vs.
THE STEAMER ARIADNE, &C.

JOHN RICHARD WILLIAMS, being examined as a witness for the libellants, pursuant to the annexed stipulation, and being duly sworn, testifies—Mr. Parsons appearing for the libellants, and Mr. Owen for the claimants:

I was first mate of the brig William Edwards at the time of her collision with the Ariadne; I have followed the sea for 12 years; have been mate altogether about 12 months; I live at No. 34 Henry street, New York; I am now expecting to go to sea; I can't go away till this

affair is settled up—this trial about the collision; the owners of the brig are keeping me here, and paying my board; I mean, by trial, to see whether the steamer is to pay for the brig or not. The brig was bound,
at the time, from Havre for New York; the collision took place off
86 Barnegat; I can't tell how far from the shore—suppose about 10
or 12 miles; it was I think, December 14, this December, (1865,) at about 11 o'clock at night. I was on the deck, and had been since 8 o'clock; it was my watch on deck; there were three in my watch, beside myself; one was Griffith Jones; he was at the wheel; another, John Morgan; Morgan I think he was on the look-out; the third was William Oakley; he was walking about the deck; they had been stationed in this way since 10 o'clock. John Morgan first saw the steamer; he reported the steamer—reported her light; I was on the deck, aft. He sung out "A light on the starboard beam." As soon as he reported the steamer I saw her; she bore from us about 4 points on our starboard bow; we were heading about N.W. or N.W. by N.; the wind was not very steady. Our vessel stood on our course; the steamer did not seem to do anything except to run right staight into us; she did not seem
to have any look-out at all. She hit us about six feet abaft
87 the main rigging; up to the time she hit us we had not changed
our course; we were on the wind; she (the brig) lay about six points off the wind; no square-rigged ship can go closer than six points; we were sailing as near to the wind as we could lay; the wind was about N. N.E.; it was a dark night, it was not clear; was thick and overcast; there was a whole-sail breeze; could carry all sa*le*; we had all our sails set except gaff-topsail, flying jib, and 4 royal sails; we had our lights out—green light on the starboard, red light on the port side, in the main rigging, about 6 feet above the rail of the vessel, which would make them 12 to 14 feet above the water; the lights were on the outside of the main rigging, in a side box, which is a box with a bottom, one side, and a back, with the light placed in the curve; the lights were burning bright at the time; our look-out was stationed on the forecastle. The steamer cut us down to the water's edge, and cut clear through into the
cabin, knocking the captain out of his bed, and slewed us around
88 alongside of the steamer. The brig's crew jumped aboard the
steamer, and our vessel went down very shortly after. When we got on board, our captain said to the steamer's captain, "My God, captain, did you run me down with such lights burning"? Did not hear the reply; we, the captain and I, and some of the men, and our pilot, went to the brig in the steamer's boat; got our red lamp—the green lamp the steamer had broke; I saved a piece of it; the red light was still burning, and we took it back with us, and it was handed up on board the steamer; I don't know what became of it afterwards.

Q. Are you sure about the date?

A. Yes; it was the 14th.

Q. What day of the week was it?

A. Wednesday night; I mean a week ago from yesterday. There was plenty of sea-room in every direction for the steamer to go so as to clear
us. I could not tell whether the steamer slowed or not; don't
89 know nothing about her engine; she did not slow, so far as I saw;
heard no whistle or bell from the steamer. There were a number of persons on her deck when I got on her deck.

Q. What more could have been done by those in charge the brig than was done to prevent the collision?

(Objected to.)

A. We could not do a thing.

Cross-examined:

I am not a married man. I have sailed some out of this port. I have been sailing out of Baltimore. I had been mate of an English vessel about eighteen months ago; she went from Liverpool to Calcutta. I joined this vessel, the William Edward, in Havre. I joined her as mate. She is a *morphradite* brig, of 338 tons burthen, I think We sailed from Havre on the 5th October last—I mean the 5th November last. The ship's company, all told, consisted of eleven persons, including a passenger, who was supposed to work his passage. The ship's company consisted of the master, (I don't know his name,) myself, as mate, Mr. Green, second mate—I don't know his first name.

90 There were five men and a boy before the mast. Their names were Oakley, Jones, and Morgan, and the names of the other three I don't know. There was a cook, who also acted as steward; I don't know his name. The person who was working his passage, I don't know his name. He was a Frenchman. These men are now in New York. As far as I know, they live in New York. They are not boarding with me. There are two or three kept as witnesses. The watch that was on deck—I did not know any of them before I joined the vessel. The cargo was not all aboard when I joined the ship. There was a little came aboard afterwards. The cargo consisted chiefly of wine. I do not know how much we had. There was some other stuff in her. I don't know what it was. All my watch was on deck, and the pilot. My watch consisted of three persons besides myself. My watch commenced at eight o'clock, and would have ended at 12 o'clock. We were just calling the other watch as the steamer struck. We were

91 not calling them to come on deck, but to come up to save themselves. I was standing aft when the steamer was reported by the man on the look-out. I was standing close to the man who was at the wheel, on the starboard side, about twenty feet 'baft of the main rigging. The pilot was standing there alongside of me. We had not been standing there very long, since the steamer was reported. Before the steamer was reported I had been walking about the deck, alone, not with the pilot. The pilot had been down in the cabin to smoke; he had come up about half an hour before the steamer was reported, and had been standing about the deck near the wheel. He was standing by me when the steamer was reported. The lookout was on the forecastle. He had been there since 10 o'clock. Before that, Oakley was there. I don't know exactly where Oakley was; he was knocking about the main deck somewhere. The look-out sung out, "Light on the starboard bow." I looked and saw the steamer's lights. I saw a bright light at masthead, and saw his red light. This light was

92 somewhere abeam, or four or five points on the brig's starboard bow; I can't tell exactly how far off. I should think she was about three or four miles off. The pilot saw the steamer also. He said the steamers should always give way to us. We did not call the men below until after the steamer struck us—just as she was coming into us. I should think it was fifteen minutes or thereabouts after the steamer was reported before she came into us. I stood all that time on the starboard quarter, looking at her come towards us. The pilot stood there also. The man on deck was not there. Our look-out did not report again; no other report was made by the look-out, than that made at first, of the steamer, until she struck. The wind at the time was about north-northeast, blowing a whole-sail breeze. The brig was on her starboard tack, and heading northwest, and sailing about four knots or four and a half. There was a nasty short sea on, which prevented

our making more than from four to four and a half knots. The brig had been standing on that tack since four o'clock in the after-
93 noon. Took the pilot at about half past five p. m. He is a New York pilot. I don't know his name. The wind was not steady; it was baffling and veered; that would not make the vessel yawn. You would have to keep the sails full, and could not steer exactly on the same course. We could see Barnegat light. It bore about southwest by west when the steamer was reported—it bore off our port beam, forward of the port beam, and was about twelve or fourteen miles off, I should think. We had the jib, fore-topmast staysail, foresail, fore-topsail, fore-top-gallant sail, main-staysail, and mainsail set. These were all the sails we had set. The bottom part of the foresail came within about eight feet of the top-gallant forecastle. The tack of the sail came within about three feet of the deck. No sail came down nearer to the deck than that. I did not look to see if I could see the man on the look-out from where I stood. I can't tell whether the look-out was forward or abaft the foresail. I could have seen the man on the forecastle without stooping down—could see more than his legs. The sail did not come that low down, and besides, the wind would blow up so that we
94 could look under; the wind that night would keep the sail full. The foresail did not extend over the side. The forecastle was four or five feet above the main deck—I can't tell exactly, say about. I can't tell how far aft that forecastle came; it did not come as far aft as the foremast. I can't say how near it came to the foremast. There was what I call a poop on the after part of the brig. This came within about three feet of the mainmast, and extended all the way across. The top of this was about three or four feet above the main deck. I was on the top of that poop-deck, and the pilot was there also. The wheelsman stands on the poop-deck. I remained on the poop-deck all the time, from the time I saw the steamer's lights until the collision. The other man was down on the main deck. He was not doing anything. The last time I saw that man was at 10 o'clock, when we were heaving the log. We were then sailing about four and a half.

It is my duty, when on deck during my watch, to attend to the
95 lamps. I set them at night, if at the time it is my watch on deck; and if it is the second mate's watch, then he sets them. It is the steward's duty to prepare them. When we trim them in the course of the night, we take them down for that purpose, and take them down into the cabin; and then, afterwards, take them and put them up. I had taken the lamps down about twenty minutes or half an hour before the collision. I took them into the cabin—first the green one, and then the red one, and trimmed them, and filled them full of oil; cut the wick off a bit; no one helped me do that. I can't tell what kind of oil was burned. I did not notice whether the wick was round or flat. I picked up the wick with a pair of scissors. I did not put the lamp out for purpose of trimming it. The lamp which held the oil was nearly as large around as that hat there, (which counsel says is about 15 or 18 inches in circumference.) If that hat is fifteen or eighteen inches around, the lamp was not so large; I should think it was about eight or nine inches around, and it was about three inches high—
96 I mean the oil part. The inboard of the box for the side-light was about a foot wide, and about three feet long; the bottom of the box was about the same width as the side, and the back was about the same width; this box was seized to the main rigging, about seven feet above the poop-deck—I can't tell how many rattlings up. To take the lamp down, we stand on the rail. The lamp is set back

near the back board, and is made to fit in the corner formed by the back board and end boards. The lamp is put in its place by lifting it over the top and putting it in. The lamp is fastened by a staple in it, which passes over a pin in the screen. The glass in which the lamp is does not come above the board. There are holes in the top of the lamp—small holes in the top of the glass, to let the smoke out. The holes which I speak of are in the brass, which is the top of the glass lantern. I can't tell you how many holes there are in the top; they are very small holes. The wind will not puff the lamp out, because it is
97 inside the lantern; it never puffs it out; have never covered over the top of the lamp for any purpose. Every vessel that I have ever been in has carried lights—this kind of lights. I have been in English and American—in English chiefly. It was abaft the light when I stood on the poop-deck. After the steamer was reported, there was no order given to the man at the wheel; there was none given to him down to the time of the collision. I got aboard the steamer right over the bowsprit. The others (some) got aboard over the side of the steamer. I stationed the look-out; I stationed him on the top-gallant forecastle; he was there, and not on the main deck, when I reported the steamer; he was not at any time on the main deck, as far as I know. There was no person in the cabin with me when I trimmed the lamps. I filled both lamps; I cleaned the glass and reflector; they were a little smoked; I am not aware that the lamps had been trimmed at any time before that; the lamps used to burn all night, and we seldom
98 ever trimmed them in a watch. The lamps will not smoke up more one night than another. After the pilot came aboard, he went into the cabin, and lay on the sofa a little while; he was not there when I went in to trim the lamps; he was on deck. Had no passengers aboard except the one who was working his passage.

Re-direct:

When the look-out reported the steamer, I answered—answered, "All right"—I saw it. He asked me if I saw that light, and I told him yes; I saw that time to the collision. I stood within 4 or 5 feet of the compass, except when I was walking about, aft; I observed the compass; looked into it once in a while; was not always looking at it. The sailing directions to the man at the wheel were to keep the brig full and bye; he got them when he relieved the wheel, from the man he relieved. When you sail full and bye, you sail by the wind, not the compass; it means to keep the sails full and ship close to the wind
99 This was done up to the time the steamer struck us. To trim a lamp, I had it away about 2 minutes; I trimmed first the starboard green light; then replaced it, and took the red one, and then replaced that. The red light was replaced about twenty minutes before the steamer was reported. In the lantern, back of the light, was a reflector; can't say what it was made of; it was metal. The face of the reflector was bright.

Re-cross:

It was not a rainy night; it had not been raining any; it was a dark night; there were no stars; it was overcast; there was no moon to be seen.

Re-direct:

(A side light produced, marked by counsel, "A.")

Q. How did your lantern or side-light compare with that?

A. The starboard one was pretty much like that, except that ours was

brass where that is tin; pretty much alike as to size; inside lamp the glass was just the same, the reflector about the same, the lamp
100 trimmed the same. The only difference in the case of the port one was the color; this is green, and our port one is red. There was no fog that night.

Q. How far could your light be seen that night?

(Objected to.)

A. Properly trimmed, as they were, I believe they could be seen about three miles, at the least. I hailed the steamer just before she struck, "Steamer ahoy;" got no reply; so far as I could see no attention was paid to the hail.

Re-cross:

I took the lantern out and took that into the cabin. Then I took the lamp out and put some oil in it. The oil was in the cabin, in the oil-feeder, of course. The oil-feeder is kept in the pantry; it is not locked. The oil-feeder will hold about a quart. We always supply the lamp from that feeder. I did not put in a new wick. The oil had not got so low as to require oil; I put in the oil, because if the thing is full of oil the lamp will burn better. We enter the cabin from the poop-deck, down the companion-way. I just gave the glass a wipe over while I
101 was in the cabin. I did nothing else while in there.

Q. How came you to take down the lights and take them into the cabin?

A. Because I did not think they burnt just quite as well as they would have done; I thought they did not burn quite as well as they would if they were picked up a bit, and it was for this reason that I took them down. I found the glass smoked a little when I took them in. We never put anything around the top of the lantern.

JOHN RICHARD WILLIAMS.

Sworn before me this 22d day of December, 1865.

[SEAL.] F. F. MARBURY, JR.,
Notary Public, New York.

(Endorsed:) U. S. district court. Archibald M. Pentz et al. vs. The Steamer Ariadne, &c. Deposition of John Richard Williams. Man & Parsons, for libel't.

102

103 U. S. district court.

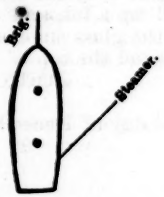
ARCHIBALD M. PENTZ & AL.
vs.
THE STEAMER "ARIADNE," &C., &C.

WILLIAM OAKLEY, being examined as a witness for the libellants, pursuant to the annexed stipulation, and being duly sworn, testifies—. Mr. Parsons appearing for the libellants, and Mr. Owen for the claimants:

I was a man before the mast on the brig William Edwards, at the time of the collision with the steamer Ariadne. I joined the brig in Havre, and had been on her during the voyage. I am 23 years of age; have followed the sea going on eight years, principally on American vessels—on sailing, sea-going, square-rigged vessels. My home is at Halifax, Nova Scotia, When I get through here, I am going to sea. I

was in the mate's watch; the collision was on the night of Wednesday, Dec. 13, 1865, at about half-past 11 o'clock; I came on deck at 8 o'clock.

I was not at the wheel at any time in the watch. I went on the
104 look-out at 9 o'clock; remained there 2 hours; was then relieved, and John Morgan took my place. This was about 20 minutes before the collision, that I was relieved. I then walked the main deck; left Morgan on the top-gallant forecastle. I did not afterwards go up to him; I went up to between the foremast and the forecastle; did that five or six times, up to the collision. When I did I found Morgan on the forecastle. He was on the forecastle, on the look-out, all the time I was forward of the foremast. Not over a minute before the steamer struck us Morgan was then standing on the forecastle—standing up. I heard Morgan report the steamer's light. He said, "A light on the starboard bow." The mate answered, "All right;" nothing further, that I know of, except "I see it." I stood right by the foremast, on the leeward side, when the light was reported; I walked up *walked up* to the starboard side and saw the light—a white light—no red light at that time. It bore about three points on our starboard bow.
105 Our vessel stood on by the wind. I did not watch the light all the time, but walked about. I saw it again 3 or 4 times; would walk up to the starboard side, and then see it; did not, till she struck us, see more than her white light. It continued to bear 3 to 4 points on our starboard bow until it got close to us, when it bore, perhaps, five points on our starboard bow. About that time she struck us; hit us abaft the main-chains—a slanting blow on the starboard quarter, thus:



as I have put down the line for the steamer.

Our vessel had not, up to that time, changed her course. She was full all the time. The night was overcast; dont know how we were heading by the compass, nor, by the compass, the direction of the wind. The brig was sailing close-hauled—close by the wind, with her starboard tacks aboard; we were going 4 or 5 knots I suppose. The brig had her lights set; a red light on the port side, *or* blue or green or whatever you
106 call it, on the starboard side, rigged outside the main rigging about five or six feet above the poop; the lights were oil lamps, set in lanterns, and the lanterns set in a box—what we call a side box. It has a back, one side, and bottom. The lights were burning at the time of the collision; they were burning at the time the steamer was reported, & were bright. After the steamer struck us, I climbed up on to the steamer. I afterwards went in the steamer's boat to the brig; the red light was still burning. The starboard light was not to be seen—was smashed by the steamer when she struck us. It was about 20 minutes from the time the steamer was reported by the look-out till she struck us. I missed the lights down at one time that night; I didn't see who took them down; it was about 20 minutes before 11 that they were down. The lights were put back; the starboard light was down

first—that was put back; the port one was then taken down—then that was put back. They were not down more than about 4 or 5 minutes. It was about fifteen minutes from the time the port light was put back to the time the look-out reported the steamer. Those lights
107 burned bright that night; there was no fog or mist that night; our lights that night could be seen 2 or 3 miles. The mate hailed the steamer before she struck us; hailed "Steamer, ahoy." I heard no reply; I saw no attention paid to the hail.

Cross-examined:

Before I joined this vessel I had been in the ship John Clark, from Baltimore. I can't tell the master's name. She sailed to Havre. I had been in her twenty-four days—one passage from Baltimore to Havre. The next before the John Clark I was in the brig Lone Star, Day, master. She hailed from Liverpool, Nova Scotia; went in her from New York to Demarara. I left her there and went to Baltimore in a brig; I don't know her name. I forget her name. I did know her name, but I have forgotten it. I have been in and out of this port about fifteen or twenty times. All the vessels that I have been in sailed out of this port, mostly. When in this port, I have stopped mostly at Stewart's, No. 23 Monroe street. I don't stop there now. I am now stopping at Jim Davis's, No. 39 Cherry street. The mate is not stopping there with me, but Jones, the seaman, is with me. I have been paid my wages. Mr. Pentz pays my board. I think, when in this port, I may be found by enquiring at Stewart's, in Monroe street. The mate of the
108 William Edward, who has testified, was with me in the John Clark. He was a seaman before the mast, and I was also a seaman before the mast. I never had known him before that. I did not know the captain of the William Edward before I joined her. I don't know his name. I don't know the names of any of the other ship's company. I did not know any of them, except the mate, before this voyage. These men are here in New York somewhere; I saw them yesterday. I met them in Cherry street. There were two of them. They went by the names of Peter and Tom. They were in the starboard watch on the passage. The 2d mate commanded that watch. I think his name was Green—Charles Green. The last place that I saw him was at the Sailors' Home, in New York. I saw him there day before yesterday. He was boarding there. There were two other men boarding there—Tom & Peter. In the starboard watch there were three men and the second mate, or rather two men and a boy. I don't know where the boy is. I don't know his name. I have not seen him since Monday last. I saw him on board of a brig. I don't know her name, nor where she lay. The 2d mate and the men in his watch were below at the time
109 the steamer was reported. My watch on deck would have ended at twelve o'clock. The collision occurred about 20 minutes or half past eleven. I know this, because I was relieved on the look-out at eleven o'clock. I was relieved by John Morgan. After he relieved me I went on the main deck—in two or three minutes after. I went to the leeward on the port side—to the leeward of the forecastle. I was walking about there along the deck. There was nobody with me. It was not very cold. I was aft the foresail—about five or six feet aft of the foresail. The foresail was hauled aft on the port side, and fastened to a pin which is aft the forward rigging, about four feet. The starboard was fastened under a hook which led to the capstan. This hook is on the starboard bow, about five feet from where the look-out stands. He stands on the forecastle. The midship part of the bottom of the

foresail came within about four feet of the forecastle. It came between two and three feet of the forecastle deck on the starboard tack, and on the port side it went over the rail, I suppose two feet, and the bottom of the sail on that side came within eight or nine feet of the fore-
110 castle deck. The look-out always stands forward of that sail. While I was on the look-out I was not abaft that sail, but forward. I did not see the man who relieved me abaft that sail after he went on the look-out. The mainmast is forward of the poop deck. That deck comes within about two or three feet of the mainmast. I suppose the boom of the mainsail plays within about six or seven feet of the poop-deck. This is not a square sail. The brig is a hermaprodite. The boom of this mainsail swung on the port side, pointing aft. The clew of the main staysail was fastened with a hook, which is hooked into the clew of the sail in a cringle. This was hooked on the port side, close to the rail, about five feet forward of the main rigging. The bottom of this sail was about seven or eight feet from the deck—the main deck. I saw the mate after I came down on the main deck. He was standing aft on the poop. The pilot was there with him. He was standing on the starboard side. At the time I so saw the mate and pilot, I was standing on the port side, to the leeward of the forecastle. I did not stand
111 there long, only two or three minutes, and then I walked about the deck on the port side. I did not walk aft as far as the poop. I had no duty to do. I kept walking there, and I was there when I heard the report from the look-out. After the report I went to the starboard side, forward of the forerigging, and when I got there I saw the steamer. She was about three points on our starboard bow. I saw a white light. I did not see her red light. She was about three miles off. After this I went back on the port side and walked about there. I had nothing to do. I did not look to see if the mate and pilot were on the poop deck when I came back on the port side. I heard the mate on the poop deck answer the report of the look-out. I knew his voice. He said, "All right; I see it." I did not hear the pilot say anything. I remained walking on the port side five or ten minutes, and then I walked up on the starboard side again. I saw the man on the look-out standing on the forecastle, forward of the foresail. I did not speak. I did not take notice of the pilot and mate on the poop deck. I saw the steamer then. She kept bearing from three to three and a half
112 and four points on our starboard bow. I think she bore then about four points. I saw no other light than that I had seen before. I did not see her red light. I only saw one light. I can't tell how far she was off then, but I suppose about two miles. After that I went back on the port side again. I stood four or five minutes upon the starboard side before I went back. I did not look to see if the mate and pilot were on the poop deck when I went back to the port side again. I did not see them. I did not hear them talking together. I walked up amidship, between the foremast and topgallant forecastle, and then walked back on the port side again, and I stopped there then until they struck. When I walked up to midship I could see the steamer. She was close to us then. I could then see some red lights *then*. I don't know how many lights I saw then. She bore about abeam then. I then thought there was danger of collision. I saw the mate and pilot then. They were then on the poop deck. I then walked back to the port side, and I was there when she struck.
113 There was a house on deck, between the main hatch and the foremast. This is the house in which the forecastle is *in*. There was only that one house between the poop-deck and the top-gallant fore-

castle. I suppose that came within about twelve or fourteen feet of the poop-deck, and extended forward to the foremast. It was about seven or eight feet wide, and about five or six feet high. I suppose this house was about eight or nine feet long. When I walked up from the port side to the starboard side, I walked between the forward part of this house and the forecastle. The distance between the forward part of the house and the after part of the top-gallant forecastle was about seven or eight feet. There were three apartments in the house—these were inside. There were three doors inside. The house outside was all in one. The space between the house and the port side of the ship, the rail, was five or six feet. It was the same on the starboard side. When I walked over to the starboard side, after the steamer was reported, I did not go as far as the clew of the foresail. I was about
114 five feet aft of it. The galley was in the after part of that house, the house on the deck. I did not go into the galley after I came off from the look-out. I did not see anybody go into it. The apartments inside the house were about four or five feet long. The galley is where the cooking is done; we do not eat there, but we eat in the forecastle. The cook sleeps in the galley. The cook's berth in the galley is placed athwart ship, I suppose, though I don't know. The berths in the forecastle are athwart ship. There was no cargo on deck. The berths in the forecastle were in two tiers. There were two tiers on the after side and two on the forward side, and there was about a foot space between the tiers. These two sets of tiers and the space between filled up the forecastle. There were four berths on the after part and four on the forward part, making eight in all. I could not see the man at the wheel from the lee side of the forecastle when the main sheet was trimmed aft. As it was trimmed that night you could not see him, but you could have seen him if it had been daylight. From where I stood
115 on the lee side of the forecastle, I could see some part of the weather side of the quarter deck. I could see about half way aft the quarter deck. I mean half way from the forward part of the quarter deck, towards the stern; when I say quarter deck I mean the poop deck of the starboard quarter. I think the brig lay over about four streaks; that is, she listed to port about that amount. I did not, at any time before the collision, hear the pilot of the brig give any orders to the man at the wheel, or to any one. I did not hear the mate give any orders. I was just going to the port side when I heard the hail to the steamer. It was the mate who hailed. No one else hailed with him as I heard. I did not hail. It was about three or four minutes after he hailed before the steamer struck us. I suppose the brig was not going more than five knots, if she was that—not more than four or five knots. I could see the Barnegat light as I stood on the port side; it bore on our port beam—aft the beam; I did not take notice, and can't say how many points abaft the beam. I suppose it was nine or
116 ten miles off. I don't know which way the wind was by compass, nor do I know how the vessel was heading. The night was pretty dark—overcast. I can't say if it was so dark that a man at the wheel could not see a man on the forecastle. I don't know whose duty it is to prepare the lights to be set; it was not my duty to do so. I don't know whether it was the mate's or 2d mate's duty to prepare the lights, or whose duty it was; it was not mine. I can't tell what time the lights were set that night; I did not set them; the mate set them; I saw him putting them there. I missed the lights when I was on the look-out, about twenty minutes before I was relieved; always look to

see if the lights were burning, and in this way I came to observe that they were down. I don't know why they were taken down. Before they were taken down they were not burning very dim; they were burning pretty well. I had not reported that the lights were burning dim. I don't know what made it burn dim; I could not tell from where I was. I was on the forecastle, about midship, when I observed that the lights were down. I looked under the foresail and saw that
117 they were down. I had to stoop some to do this. I could not see our lights from where I stood without stooping, so that my head would come within three or four feet of the deck. When I saw that our lights were missing, I made no report. It was common some nights, in some watches, to take them down. I never took them down. I have seen them taken down to trim them, as I supposed it was; they were taken into the cabin for that purpose. I observed that the starboard light was missing first. I stooped down to see when the other was missing, and it was about a couple of minutes after I stooped down & saw that the green light was missing before I saw that the red light was missing. I could see the red light from where I stood when I stooped down. I had to stoop as much to see the red light as to see the green light. I had to stoop to see when they were put up. I did not see them put up, but I saw them up. I did not see Morgan at this time. I had not seen Morgan for half an hour before this; he was then on the main deck; he was the one who relieved me on the look-out. At the time our lights were missing, I did not see the steamer's lights.
118 I suppose the lights were about five or six feet above the rail of the vessel. I have never looked much at the box in which the lights were. The length of it was about three feet; the bottom board was about a foot wide, and the side and back were about a foot wider. I never placed the lamps there. When I looked under the foresail to see the lamps, I stood about midships. When I say the lamps burned bright that night, I mean while I was on the look-out and observed them. I heard all the cross-examination of the mate and part of the direct.

Re-direct:

Q. Was the main staysail all to leeward of the mast?

A. Yes, sir; of the foremast. Top-gallant forecastle is the proper name for that in which the look-out stood. The forecastle was in the house on the deck, and it was to the leeward I stood when I spoke of standing to the leeward of the forecastle. It was seven or eight feet from the foremast to the top-gallant forecastle.

his
WILLIAM + OAKLEY.
mark.

119 Subscribed and sworn before me this 22nd day of December, 1865.

[SEAL.] EDWARD J. OWEN,
Notary Public N. Y. County.

(Endorsed:) U. S. district court. Archibald M. Pentz et al. vs. The Steamer Ariadne, &c. Deposition of William Oakley. Man & Parsons, for libe'l'ts.

120

121 U. S. district court.

ARCHIBALD M. PENTZ ET AL.
vs.
THE STEAMER ARIADNE, &C.

GRIFFITH JONES, being duly sworn and examined as a witness for the libellants, pursuant to the annexed stipulation, testifies, (Mr. Parsons appearing for the libellants and Mr. Owen for the claimants:)

I was a hand before the mast on the brig William Edwards at the time of the collision between her and the Ariadne; I joined the brig in Havre. I have followed the sea 21 years; in square-rigged sailing vessels almost all the time; principally on English vessels, also on American vessels. My home is in Wales, Great Britain. I am expecting to go to sea as soon as I get through here; can do nothing else; would stop ashore if I could. I was in the mate's watch, and on the night of the collision I came on deck at 8 o'clock; the collision took place at
122 20 minutes to a half hour after eleven o'clock; I was at the wheel, which I took at 10 o'clock. I heard the look-out report "A light on the starboard bow;" the mate answered, "It is all right, I see it." John Morgan was on the look-out; he stood on the forecastle deck; William Oakley was on the main deck. The light was reported about twenty minutes before the steamer struck us; I looked and saw the light; it bore from 3 to 3½ points on our starboard bow; at first I saw a bright light; our vessel kept on her course; she was sailing full and bye, and did not change till the steamer struck us. We had the wind from about north-by-east to N.E.-by-N. We were heading W.-N.W., and from that to west; we were sailing within about six points of the wind; can't tell exactly; we were close-hauled by the wind, full and bye. After the steamer was reported, till she struck us, our vessel kept on by the wind; she did not change her course at all up to the collision.
123 The compass was right before me in the binnacle; there was a light in the binnacle; I looked at the compass; was looking at it all the time, and at the sails, keeping her close to the wind. The mate and the pilot stood together, to the windward of me, on the poop. I saw the light from the time it was reported to the collision; every time I looked I saw it; after I saw the bright light, before the vessel struck us, I saw her red light. From the time the vessel was reported she continued to bear from 3 to 4 points on the starboard bow; when she struck us, she struck us about 4 to 5 feet abaft the main rigging. The brig had her lights set; a green light on the starboard, and a red light on the port side, rigged on the outside of the main rigging; these lights were burning.

Q. How well?

A. So well that you could see them from a great distance.

Q. From what distance?

(Objected to.)

A. Two to three miles, in my judgment. These lights had been
124 taken down that evening; first the starboard light, then that one replaced, and the port one taken, and then it was put back; each one was down from 2 to 3 minutes; they were taken into the cabin by the mate to be trimmed; the port one was put back from 20 minutes to a half hour before the steamer was reported. From the time the lights were put back they burned up to the collision, which knocked the starboard light down; the red light kept burning after the collision. The force of the collision threw me off the wheel to the lee-side, right on top of the

pilot and mate; they stood on the starboard-side of me when the vessel struck us, and the collision hove them to leeward, and gave the wheel a turn, which knocked me on to them; I hung on to the wheel until then. I picked myself up, cut our boat adrift, which was on the main deck, and then jumped aboard the steamer; the pilot was calling to me; did it as quick as I could; got on the starboard bow of the steamer by her cat-head—between that and the fore-rigging; staid there
125 till I saw our men come on deck, which was right away, one after the other; the captain, cook, and the boy came after me. When I got on the steamer's deck I saw the clock on the steamer's pilot-house. The collision took place from 20 minutes to half past eleven; the steamer's clock was at 25 minutes after eleven when I got on deck.

Cross-examined:

I did not know either of the officers or crew when I joined the brig. I was in the mate's watch from Havre; there were three men besides the mate in that watch; they were John Morgan, William Oakley, and myself. My watch commenced on the night of the collision at 8 o'clock and at that time the other watch went below. I did not see any one of that watch on deck afterwards and before the collision. At 8 o'clock I went on the look-out, and stood there until nine, when I was relieved by William Oakley. I then walked on the starboard side of the main deck until ten o'clock, and then I went to the wheel, and relieved John Morgan. I don't know where he went; I suppose he
126 went down on the main deck. I did not see him after he left the wheel up to the time of the collision, and do not know where he was on the deck. William Oakley was on look-out from nine until eleven o'clock, at which time he was relieved by John Morgan, who went on the look-out. I did not see him, but I struck six bells, and then the look-out was changed; these bells were struck to have one man relieve another, according to the rules; when I struck six bells it was eleven o'clock, by the clock, which I could hear striking. I could not see William Oakley after John Morgan went on the look-out, and can't tell where he was about the ship. After I struck the six bells it was from twenty minutes to half an hour before the steamer struck. I could see the light of the steamer when the man on the look-out sung out; he sung out after I struck the six bells, about five or ten minutes after, I cannot tell exactly. He sung out "Light on the starboard bow." I saw the light; I can't tell exactly how far it was off, but I suppose it
127 was about a half a mile or a little more; the steamer bore from about three and a half to four points on our starboard bow. I saw a white light; I did not see the red or green light. She was open to my view; none of our sails was in the way of my seeing her; I watched her from that time; I kept my eyes upon her; the bearing any as she approached. I am quite sure of that; I kept my eyes upon her so closely that I cannot be mistaken about that; I suppose it *I suppose it* was from twenty minutes to half an hour before she struck. I did not talk about her, as it was not my business, as I was attending to my duty, but the mate and pilot talked about her; the pilot told the mate "As long as you keep a good light the steamers will keep clear of you." That is all I heard said just before the steamer struck us. The pilot said she is going to come into us. There were no orders given to me about the wheel. There was not then much time to give orders; she was close upon us. I saw the red light just as she struck; it was not dark. I don't know why I did not see the red light before. There was a hail from our vessel just at the time the pilot said she was com-

128 ing into us. The pilot and the mate hailed. It was not a windy night; I think it was a four or five knot breeze. There was not a great sea on; there was not a chopped sea. The pilot was taken about half past five. When I went to the wheel at ten o'clock I found there on the poop-deck the man at the wheel, and the mate and pilot; the man at the wheel whom I relieved gave me no course, but said "Full and bye." I kept my vessel afterwards "full and by," and the brig headed west-n'west, and the wind was from north-by-east to northeast-by-north, shifting backwards and forwards about two points. After I took the wheel the pilot remained by me on the poop-deck all the time down to the collision, and the mate remained there also; they did not go into the cabin to smoke; they did not go in to set down at the time the mate trimmed the lights.

Question. How came the mate to trim the lights?

129 Perhaps the wanted to be lighting better than they were before. I did not know anything about the lights. I had not anything to do with them. I could not see the lights. I can't exactly tell, but I think I did strike the six bells about a couple of minutes before he trimmed the lights; it was usual to trim the lights about once in a watch. I never trimmed the lights myself; the lights were taken down when trimmed, and were taken down in the cabin. The cabin is entered by the companion-way in the after part of the trunk on the starboard side. He went down before the wheel. The steamer's light was not reported while the mate was in the cabin. I suppose the lights were up about twenty minutes before the steamer was reported—from twenty minutes or a quarter of an hour—I did not take any particular notice of the time; I could not see the time. I saw the mate put up the lights. I did not hear him make any complaint about the oil, nor about having to be trimming the lights. I can't tell whether the men in the forecastle *was* called or not before the collision, because I was at the wheel. I did not hear the mate or pilot call them. I found

130 them at the main hatch when I cut the boat adrift. I cut it adrift. I don't know who helped me. I cut the lashing on the port side. I did not hear any hail from the steamer. I did not hear any of her bells. The brig had on the mainsail, main-staysail, main-topmast staysail, foresail, lower fore-topsail, upper topsail, top-gallant sail, jib, fore-topmast staysail, and she had furled the royal-gaff topsail and the flying jib. I don't know when they were taken in. They were not during my watch on deck. I suppose they were taken because the wind was so strong. The middle of the foot of the foresail, when I was on the look-out, came within about eight feet of the top-gallant forecastle. I suppose, on the starboard side it came down to within about three feet, and on the port side it came down to the rail. When I was at the wheel I could not see the man on the look-out; the foresail was in the way; he was on the forward part of the top-gallant forecastle. When the ship is on an even keel the man at the wheel stands on a level

131 with any one on the poop-deck, but when she lists then one side would be higher and the other lower; the wheel is right midship. The mate and pilot stood to the windward of me and close by. The wheel is iron, and has eight spokes—only one wheel. I stood on the starboard side of the wheel. The wheel was a standing wheel, not travelling.

Question. How do you know how well the brig's lights were burning?

Because I saw the man when he fetched them out of the cabin. When he came up out of the cabin I could see it in his hands. I could not see our red light from where I stood, at wheel, when it was in its place.

I could not see the green light from where I stood, when it was in its place. I could not see either of them. The pilot and mate could not see either of the lights more than I could. They stood behind the lights. I observed, when the mate took the lamps into the cabin that the glass was not smoked. The lights did not burn so very low, either, they were burning pretty fair, but he brought them down, as I suppose, so he could have a better light in them. I don't know what he did to
132 them in the cabin. I had seen the lamps. The lamp made on exhibit looks like the ship lamp, except this is tin, and ours is brass. But I never looked inside of our lamps. I never trimmed them myself. It is more than I can tell who takes care of the lamps. I know that the mate takes them down after the night is over, and puts them in the cabin. I don't know how far a ship's light may be seen in the night; it might be seen two three miles. I don't now refer to the brig in making this answer; you asked me generally. If there had been no sail in the way between me and the look-out, I don't think I could have seen him from where I stood, at the wheel. There were two masts in the way. If there had been no masts in the way I think I could have seen the man on the look-out that night, but I am not certain. I know which light was taken down first, because I saw the mate coming from the windward side with it. It is my judgment that the steamer's cat-head tore the rigging and carried the green light
133 away. I did not go off in the boat to the brig after the collision; the boat was not large enough. All the crew of the brig and the pilot went off in the boat, except the cook, me, and the French boy.

Re-direct:

I know a steamer when I see her at night, by her mast-head light, and two side lights. The mast-head light is a bright light. The difference between her lights and those of a sailing vessel is that she carries, in addition a bright light at the mast head. The light, therefore, which we principally look for in a steamer, is bright mast-head light—this when she is coming right towards you—and they get in sight you see her other two lights as well. It was the bright mast-head light of the steamer which I first saw and watched. Don't know how fast the steamer was going. Such a night as that you can see this bright light—I can't tell how far, exactly—two miles, or two miles and a half, if it is a good light. I can't tell, exactly, how far off that light was when I first saw it. It might be a mile, or a mile and a half, or two miles. It might be more; I can't tell. I never saw any ship's light that
134 could be seen further than those the brig had that night. She had a good light. Morgan relieved Oakley at six bells or eleven o'clock, that night.

Q. You have stated you were not quite sure whether the six bells were struck before or after the mate trimmed the lights. If they were trimmed while Oakley was on the look-out, were they trimmed before or after the six bells struck?

A. John was on the look-out when the lights were trimmed. It was a few minutes after. If the lights were trimmed before eleven Oakley was on the look-out; if after eleven John was on the look-out.

Q. Repeat it.

A. I believe it was a few minutes after eleven. I believe it was a couple minutes after eleven—a few minutes after six bells.

Q. Repeat it.

A. If William Oakley was on the look-out it was before eleven.

Re-cross:

I think they were trimmed a little after eleven, and, if so, Morgan was on the look-out. The lights, as they came out of the cabin,
135 did not blaze up too high or too low. If they blazed up too high they would smoke the glass.

his
GRIFFITH + JONES.
mark.

Sworn before me this 23d day of December, 1865.
[SEAL.] EDWARD J. OWEN,
Notary Public N. Y. County.

(Endorsed:) U. S. district court. Archibald M. Pentz et al. vs. The Steamer Ariadne, &c. Deposition of Griffith Jones. Man & Parsons, for libellants.

136

137 U. S. district court.

ARCHIBALD M. PENTZ & AL.
vs.
THE STEAMER ARIADNE, &C.

SIDNEY ASHLEY, being duly sworn as a witness for the libellants and examined, (Mr. Parsons appearing for the libellants, and Mr. Owen for the claimants,) testifies:

I was master of the brig William Edwards at the time she was lost. I reside at Mystic River, Connecticut, about 120 miles from New York. I am expecting to leave for home when I get through with this examination, and am then expecting to go to sea. The William Edwards was a new brig of 338 tons, custom-house new measurement. She was launched in April, 1865; was ready and went to sea on June 1st, 1865, on a voyage to New Orleans; thence she went to Havre, and on November 5, 1865, civil time, November 6, 1865, sea time, she left Havre for New York. She was laden with a full cargo of wines, wool, coffee, porcelain ware, sardines, and some boxes of merchandise.
138 The collision was on December 13, 1865, about 12 miles from Barnegat light, the light bearing southwest-by-south; I was below at the time, asleep. I had a crew consisting of eleven, all told, (and at the time of the collision, the pilot,) including myself, John E. Williams—Joshua—John E. was his given name, was chief mate; Charles Green was second mate; then had cook and six before the mast, and one who worked his passage. Two of these, one the man who worked his passage, were Frenchmen, speaking no English. It was a full and sufficient crew for the vessel. We had met with no disaster of any kind, up to the collision, and then had on board the cargo we had received.
(Bill of lading shown, marked with initials of counsel.)
This bill of lading was signed by me for fifty bales of wool which we had on board at the time of the collision. The persons named in the libel as owners were owners of the brig. I was in my berth at the time of the collision, asleep, on the starboard side of the cabin, and
139 was waked by the crash and something hitting me on the temple—a broken timber or something. I got out of my berth as quick as possible, and got on deck. I had turned in with my pantaloons, vest,

stockings, and under-clothing on, merely taking off my coat and boots. I did not wait to put on anything; took my boots in my hand and went on deck. I found the steamer afoul of us, just backing off. Found no one on the brig's deck; they had got on the steamer, where I got as quickly as I could. The steamer had struck us about six feet abaft the main rigging; her cat-heads were afoul of the two after shrouds of the main rigging; had carried away the chain-plates, torn the rattlings from the shrouds, and the starboard side-light was gone, the steamer's bow lying right against the main rigging where the light had been until the steamer broke it. The steamer had cut into the cabin 4 or 5 feet, and down below the water' edge. The steamer, after I got on board, went clear by the brig. The brig swung around on the other tack, bring-
140 ing her red light on the port side into sight; I saw that it was then burning first rate. When I got on to the steamer, I went into the wheel-house and there saw the captain. I asked him what kind of a look-out he could have, to run us down with such lights as those set, or as that? referring to the red light which was then in sight. He said, "I don't see your green light." I answered, "Of course you can't see it, for you have knocked it out of the rigging—you have run into it." I then asked him for a boat to go on board of the brig. He had a boat lowered; I got into it with our mate, pilot, and I think all of our crew, except Long and the cook—all the boat would comfortably take; no one went with us belonging to the steamer. We went on board the brig, sounded the pump, found six feet and a half of water in her. Then clewed up and hauled down our sails to bring the leak as much above water as possible, to see if we could stop the leak; she was heeling over towards the cut. Then got the hawser on deck, for the
141 purpose of towing her into port if possible. By that time we saw she was settling very fast, that her decks were nearly level with the water; then made up my mind that the brig was going down, and told all hands to save what they could. They did so. The cook saved nothing, not even to a pair of pants; went on the steamer in his shirt. The French boy did not save a rag; he did not go back in the boat. As to Long, can't say whether he saved anything or not. Morgan saved but very little. All lost more or less; none of them saved bed or blanket. I lost a good deal. Then all got into the boat, by which time the water was on the deck. Before we got in the boat, the red light was taken down and what remained of the green; all that remained of the green was the ring situated at the top of the lantern, as the one in evidence, though it was a large ring. The ring just came above the top of the side box, and was there lashed to the rigging by a piece of seezing stuff. The ring was broke off just by the neck,
142 just below the ring, and remained lashed to the rigging. The ring was unlashed, taken down, made fast to the red lantern, and both were taken on board the steamer. I hung the ring up in the steamer's wheel-house when I got on board, and gave the red light to some one on board the steamer, and I have not had them since. When the red light was taken down it was still burning bright and good. After we all got into the steamer's boat to return, we found it was too deeply laden, or rather cumbered up; four men got on the brig's deck, launched the brig's small boat, which lay across the main hatch; part of the baggage, with the four men, were put in the brig's boat, and so went to the steamer. I went below between 9 and 9½ o'clock of the morning of the collision; don't remember the exact hour; it may have been earlier. Our vessel was then sailing by the wind within about six points free, and by which, means as near the wind as you can.

was insured, but I do not know where. The freight-money amounted to $2,000, or rather, I should say, the charter was for 10,000 francs. The charterers were Moniset & Brown, of Havre. No freight had been paid in advance. It was not the duty of the charterers to supply
150 the ship. The ship was consigned, in Havre, to Dupposseire & Co. They did not disburse the ship. That was done by a broker whose name was Frank, and some one else whose name I do not remember. The man with whom I boarded recommended me to the place where to get the oil; his name was Edward Page; he was a Frenchman. I bought the oil of grocer. I do not remember his name nor how much a gallon I paid for it. It was not bought by the gallon but by the liter, [litre.] I had burnt that kind of oil before—the last time I was in Havre and when I was in Hamburgh; I can't tell the year exactly; it must have been five or six years ago.

Q. How came you to try this oil at Havre before purchasing it?

Because I wanted to get good oil, so as not to have the lights go out in the night; with poor oil they would be liable to go out in the night in cold weather, if not trimmed—if not fixed up through the night. The cold chills some kind of oil, thickens it up, and that makes the light burn dull, and I suppose it would make the light go out entirely if it got thick enough. The only name that I ever heard for the oil which
151 I purchased at Havre as before stated was "rape-seed." The oil is manufactured in France from a seed called rape seed. I don't know of more than one kind of rape-seed oil. The side-lights were not supplied from the oil which I had taken from New York after we left Havre, but they were supplied entirely from the rape-seed oil; at least that was my orders, and I believe those orders were obeyed. I did not use the old or New York oil, because I thought the Havre oil would give a better light. I don't know that there was any defect or imperfection in the New York oil. It burned very well on the voyage to New Orleans, and about the same on the voyage to Havre. I had no fault to find with it. The William Edwards is the second vessel that I have sailed in w'ere side-lights were carried. The other vessel was the brig Portsmouth, from New York. I did not command her more than three or four months. I went from New York to Havanna and back in July, 1864. I think this voyage to Havanna and back ended here in Nov., 1864, and from that time until I took command of the William Edwards I
152 was at home at Mystic. I took command of her some time in April—about the time she was launched. Upon my arrival in New York I noted my protest before Johnson & Higgins, notary publics. I had the protest extended, and it was signed by me, the pilot, first-mate, and William Oakley. It was not signed by any of the others; none of the others were requested to *to* sign it. The brig had what we call a general cargo, consisting of wines, sardines, wool, coffee, porecelain ware, burr-stones, some iron, and boxes of merchandize, the contents of which I am ignorant. There were also some casks of liquor; whether it was brandy or not I cannot say; casks of cheese. The vessel was to have been consigned to Boyd & Hincken, the charterer's princ'als. I don't remember to whom the cargo was consigned. There were a great many different consignees. I don't know whether the cargo was all insured. I know that some of it was. I had my own property
153 aboard—one cask of wine, a barrel of brandy, a can of soap, and perfumery, also some silk. This was about all that belonged to me, except my clothing. I know that the green light was in the rigging until it was broken, by the ring of the lantern being left there. I mean that the lantern was in the rigging until it was broken. I went below

that evening between nine and half-past nine—I don't remember exactly. I then turned in and remained below until awakened by the collision. While I was on deck I was round about up and down in the cabin. The pilot was in the cabin once or twice, I believe.

Q. You stated that the lamps are now fastened differently from what those were on the brig. State wherein they are fastened differently.

Instead of their being secured at the top and bottom of the lantern as this is (referring to the exhibit) there is a slide on the lamp which goes into a socket in the box. The bottom of the lamp-box was about the same width as the side, and which were about a foot wide.

154 The ring of the lantern came above the back of the box.

Q. When you say that the lights could have been seen three miles, you mean that they could have been seen that distance if burning brightly?

Yes, sir; the brig had been sailing on this tack from four o'clock in the afternoon previous to the collision. I brought away the red light from the brig. I held it in my hands until we got alongside of the steamer. I can't tell whether there was any oil spilled out of the lamp after I took it from the brig. I did not notice. I think it upset in the boat. I can't say if it was lighted when it was passed on board the steamer. I asked for it after I got on deck, and Mr. Green, the second-mate, said he had put it in the engineer's room. I have not seen it since. I hung the ring which I took off up in the steamer's wheel-house, and have not seen that since. The only persons on board the brig who have not given in their testimony are the pilot and the French boy, whose name was Paul Furnerron, who could not speak English, and the

155 French passenger. He has gone to sea in the Amanda Guion. I have been present and heard all the testimony which has been taken. The French boy worked around with the crew, pulled and hauled ropes, and went aloft. He was probably seventeen years old. He was in the second-mate's watch.

Q. When you saw the captain of the steamer, after you had got upon her decks, and had the conversation in reference to the collision and your lights which you have stated in your direct examination, who was present?

I think the mate and pilot of the brig were present. I did not notice whether any other person from the steamer was present or not, it is my impression that my mate and our pilot were present.

Q. Did not the captain state in that conversation that the brig did not have any green light?

No sir.

Have you stated all that was said by you to the captain, and by him to you in that conversation?

156 No, sir; I have not. There was considerable talk; he did not say, "I did not see your green light," he said, "I don't see your green light;" and after I came back I showed him the ring of the lantern. When I got abroad the brig I looked at the hole made by the collision. We took in the sails in order to try and right her, so as to get the leak out of the water. We could not get her around on the other tack, because there was so much water in her; she was almost unman'geable. I think it would not have thrown the leak out of the water if she could have been got around on the other tack, because she was cut below the water in the first place, and, with six feet of water in her, it brought the leak more under water; she settled bodily. I can't tell exactly the latitude and longitude in which the brig was at the time I got my last observation of the sun; but, as near as I remember, she was about 68° 20′

west longitude, and about 35° 30′ north latitude; this was either three or four days before the collision, I don't remember exactly which.

157 I mean to say that a person standing at the wheel could see objects on the weather or starboard side of the brig, as she was sailing that night, from about a point and a half to two points of right ahead clear around over the stern. A person standing on the brig's top-gallant forecastle deck, forward of the foresail, could see from right ahead around on the starboard side as far as the starboard quarter; to do this the man must be on the starboard side of the forecastle just a little on the starboard side. If he were close to the rail he could see clear aft; at that place, I think he could see aft without looking under the foresail, but he would look around the outer leech. I should think the capstan was forward of the foresail as the sails were then trimmed. It is always forward of the foresail; I think it was probably three feet forward of the foresail as the sails were then. I don't think I went up to look into the box to see how the lights were burning before I went below that night. I have never commanded any vessel belonging

158 to Charles H. Mallory. I was in one vessel belonging to him; that was five years ago, I guess; I have known him ever since I was a boy; I suppose I have known him some twenty-five years; I have no offence against him; we are on good terms—I suppose so; I have no feeling against him. The long-boat was stowed across the house—thwart ship; I suppose it was about 22 feet long and may be longer. It was stowed bottom up; it was wider than the house, and projected two or three feet on each side of it.

Re-direct:

I have been at sea, say 25 years, probably 14 or 15 as master. I got the Baker's signal oil we took from New York with us from Pentz Brothers. The side-light wicks were made of wick-yarn which comes for the purpose. The William Edwards was owned and registered in New York. The William Edwards sunk before the steamer left; we suppose she sunk; she went out of sight while I was on the boat just alongside the steamer. It was not possible to save her. Barnegat is in longitude about 73° 40′ west, as near as I can remember; each degree of longitude makes a difference of four minutes of time.

SIDNEY ASHBY.

SIDNEY ASHBY.

Subscribed and sworn to before me this 29th day of December, A. D. 1865.

EDWIN F. CAREY, J'R,
Notary Public, City of New York.

159 (Endorsed:) U. S. circuit court. Archibald M. Pentz & al. vs. The Steamer Ariadne, &c. Deposition of Sidney Ashby. Man & Parsons, libel'ts,' proc'rs.

160

161 U. S. district court.

ARCHIBALD M. PENTZ & AL.
vs.
THE STEAMER ARIADNE, &C.

PETER GRAY, being duly sworn and examined as a witness for the libellants in this cause, testifies (Mr. Parsons appearing for the libellants, and Mr. Owen for the claimant:)

I was steward and cook of the brig William Edwards at the time of the collision between her and the Ariadne.

The William Edwards was a bran-new vessel, and was on her first voyage, which began at New York, thence to New Orleans, thence to Havre, whence she was bound at the time of her loss. I shipped on her at New York; everything about her was new; I attended to her side-lights; she had two side-lights—one on each side; each lamp had three tubes like the one showed me. (The one in evidence.) The size of the lamp and lantern was just the same, and the same appearance.

162 I trimmed those lamps every day, and did trim them the day before the collision took place; I had oil expressly for these lamps, the binnacle and cabin lamp. The oil was procured in Havre; it was tested in Havre before it was used at sea; the captain burned it in his room in the hotel at Havre; he burned it in the lamps of these side-lights; it burned for 24 hours without trimming or anything done to them; when I went up, twenty-four hours after it was lighted, the lamps were still burning brightly. Mr. Greene, the 2d mate, lit them the night of the collision; they were then in good order; I had just trimmed them that forenoon; I last saw them before the collision about half past ten; they were then burning bright. I was asleep at the time of the collision; that started me on deck; I then went on the steamer, and after that I saw the pal' light; that was green; it was burning bright.

Cross-examined:

163 I am about 37 years old; am a colored man, and have followed the sea going on 18 years, and have always been cook and steward. I live at Williamsburgh; I am married, and my family live there, in a new street called Adams street, and I will be found there when in port. I am not shipped for a voyage, but I expect to go to sea again. I never knew the captain before I shipped on the brig; I shipped in New York to go to New Orleans, then I signed to Havre and to New York. We had sixteen gallons of oil before leaving New York; I don't know from whom it was purchased; no oil was purchased in New Orleans—we had plenty aboard; the oil was carried in large tanks, which hold thirty-five gallons, so placed that the' could be filled on deck, and so that the oil could be drawn in the pantry of the cabin on the port side. We had not burned out all of the oil before the vessel reached Havre; I sounded the tank after the vessel was ready for sea at Havre, and before any oil was purchased, and found, by a rough calculation, that there were

164 five or six gallons of oil in the tank, which was not sufficient to bring the vessel to New York. I don't know exactly, but I think there were about eight or nine gallons purchased there at Havre; I don't know from whom it was purchased; it did not come aboard until the captain had tried it; he tried it at two different places; it came aboard just three days before we sailed; it was not put into the tank, but it came aboard in a large stone jug, in which it was kept, and the jug was kept in the pantry which I have spoken of; we commenced to use this oil the first evening out; we poured it out of the jug into an oil feeder; we had two oil-feeders, each of which held about three pints, and were kept in the pantry; there were four lights supplied from this oil—the side-lights, binnacle-light, and the light in the cabin. Sometimes when I filled the side-lights in the morning, the oil would not be half out; I don't know the kind of oil; the captain told me the name, but I forget what it was; the name was new to me; I never did

165 use such oil before—never; it was as clear as fluid; used the

same kind of wick for that oil; purchased new wicks in Havre, which were used on the voyage.

Q. How came the captain to try the oil in Havre before it was sent aboard?

He said he had a great deal of trouble with oil in cold weather; that he had paid a big price for it, and he wanted first-rate oil. He did not say that it was a new kind of oil to him. The captain's hotel was right across the way from where the vessel lay; all the American captains board there. There were two vessels there from Baltimore, a brig from New Orleans, and a ship from New York, but I don't remember the names of either of those vessels. I took the lamp from one of the side-lights, and carried it to the hotel. I did not fill the lamp, nor see the captain fill it. I went up to carry some wood to the hotel, and saw that it was lighted and burning brightly. I did not go again to the hotel
166 until the next evening, when I went to carry some more wood, and I saw it was burning still; that is all I know about how long it was burning, whether it had been burning all night all day, I cannot tell. The oil did not come in a jug from the shore; it was put into my old vinegar jug; I rinsed the vinegar jug out clean, and then took it ashore, when a man took it on a hand cart and went away, and afterwards the same man brought it back filled chuck full, and I took it aboard and placed it in the pantry. When we filled the feeders I poured out the oil from the top or neck of the jug. We had two more spare demijohns of small size, and I poured out what vinegar there was in the jug into them. It is my duty to trim the lamps on board the ship, and I do this every day, after breakfast. I never take down or put up the lamps. It is my duty to clean them, and place them in the lamp locker in the cabin; we used to put in new wicks—about one in two weeks; I always have them short so as to trim them. On the vovage from
167 Havre, I put in a new wick every fourteen days. The wicks were made of cotton—the very best; I made them myself from cotton yarn, which I rolled off from balls. The wicks were so fitted as to go up quite slack, and so that they would not slip down; they were made of three strands, laid together but not twisted. The wick of the cabin-lamp was different—it was a round wick, to fit one of those fancy lamps, which was bought ready for use. Take supper at five o'clock at sea; after supper I have to clean up my dishes, clear away my table, and stow all away. I get through all my work if it is in any way decent weather, at about half-past six, and then I have nothing to do until bed-time. I turn in from nine to half-past ten o'clock; I turned in on the night of the collision at half-past ten; I was on deck about ten minutes before I turned in; I went forward to the privy, and after I had used it, I returned right back to my room. I spoke to Harry, who
168 was on the look-out; I did not stop, but only spoke as I passed by him. The privy was on the starboard side, forward, on the after part of the cat-head, between that and the windlass. I went forward to the privy on the port side and came back on the starboard side, and went into the galley from that side, and did not go out again before the collision. Before I went forward to the privy, I had been in the galley; I had been there ever since I got it cleaned up. I don't know that the oil which was burned at the hotel was the same as that put in the vinegar jug, except as the captain told me so. The oil that he burned was not taken from the jug. When I trim'ed the lamps in the morning, sometimes the oil in the side-lamps was half gone, and sometimes not quite that. I think one of those lamps filled would hold about a pint and a gill, and they would be about half full when I trimmed them in the morn-

ing. We burned in the forecastle the oil which we had bought in New York, and we burned the same kind in the galley as that used in the forecastle. We got vinegar in New Orleans; we bought vin-
169 egar in New York, and then had the vinegar jug before spoken of filled up again in New Orleans; we did not have it filled in Havre. I poured it all out into the other two jugs, and had plenty to bring us home, after we got some in Havre to fill up those two jugs. We had no other vinegar aboard when the vessel left New York, than what was in the vinegar jug. It was a bran-new jug from the store. The vessel had been out forty-five days from Havre, if I am not mistaken; and I put in a new wick every fourteen days. The binnacle-lamp when trimmed would be a little better than half gone. The binnacle-lamp held about the same quantity as the side-lamps, perhaps a little less. The cabin-lamp when filled took a little more oil than the others, that is, when it was trimmed fresh, but it was not so much burned out as the others when I trimmed them. Harry, of whom I have spoken, was a man before the mast; I don't know his other name; he may have gone by two names for
all I know. I know that Greene, the 2d mate, set the lamps; I
170 did not see him do it, but it was his watch on deck from 6 to 8, and I suppose he set them; the chief officer on deck sets the lamps. I clambered up over the starboard side of the steamer, and after we all got aboard, she backed off and then I saw the brig's light as already stated. I did not go in the boat to the brig; I did not see the lamp of the brig on board the steamer, but I know it was passed up on to the steamer. I heard them say "Look out for the lamp," but I did not see it. At sea it is usual to set the signal-lamps a little before dark, it was just about dark, or a little after dark, when they were set on the night before the collision. It was dark about 5 o'clock. The wind was not blowing very fresh that night; it had been during the day. There was not at 5 o'clock a very bad sea on. I did not take notice what sails the brig had on when I turned in. That is out of my branch of business altogether.

Re-direct:

I don't know how much oil was left in the jar. There was oil
171 left; we had enough on the vessel to last two or three months. When I turned up the jar in which was the oil bought in Havre about the day of the collision, there seemed about a quarter of it left; about three quarters were gone.

his
PETER + GRAY.
mark.

Sworn to before me, December 27, 1865.

EDWARD J. OWEN,
Notary Public, N. Y. County.

(Endorsed:) U. S. district court. Archibald M. Pentz & al. vs The Steamer Ariadne, &c. Deposition of Peter Gray. Man & Parsons, for libellants.

171

173 U. S. district court.

ARCHIBALD M. PENTZ & AL.
vs.
THE STEAMER ARIADNE, &C.

CHARLES GREENE, being duly sworn and examined as a witness for

libellants, testifies—Mr. Parsons appearing for libellants, and Mr. Owen for claimants:

I live at New London, Connecticut, 110 or 115 miles from here. I am looking out for a ship to go to sea, and expect to sail as soon as I get one. I was second mate of the brig William Edwards, from the time she left New York till she was lost by collision with the steamer Ariadne. The night of the collision my watch was on deck from 6 to 8 o'clock; I went below at 8 o'clock into my room, which was in the forward house, aft the forecastle; I turned in at 8 o'clock; went to sleep at 9 o'clock, and remained asleep to the collision, which woke me up. I set the brig's lights that evening at six o'clock; the blue light was on the star-
174 board side, and the red light on the port side; the blue light we sometimes call green, and sometimes blue; I consider it in fact green. The lights burned when I set them, first rate, and continued to burn well till I went below; I had observed the way in which those side-lights burned from the time we left Havre; they had burned good; they used the best kind of oil that could be got; it was a good deal better than that we had been using up to the time we got to Havre. When I was awakened by the collision, I came out of my room; I had turned in with my clothes on, except my boots, vest, and jacket; did'nt stop to put anything on; cut away one side of the brig's boat, and then got on board the steamer as quick as I could. The steamer then got clear of the brig; the brig laid all aback, rolling; saw the starboard side; then the port side came into view; when the port side came around, saw the red light; it was burning good; saw it from the steamer. I subsequently went with the captain to the brig, and the red light was still burn-
175 ing; the steamer struck the green one; the ring was left of it; the rest went overboard; was carried away. The collision took place at half past eleven; I looked at my watch; I was aboard the brig at the time, and it was half past eleven by it. I had not set it for about a week; it was twelve o'clock when I set it. I got the time from the captain when he got it from the sun; it was, I suppose, about three days before the collision, since the captain had an observation from which to get the time; the weather had been thick, and prevented an observation. At the time of the collision it was overcast; there was no fog or mist; it was middling dark; you could see about three quarters of a mile. The brig's lights, as they were burning that night, could be seen that night three or four miles; a vessel could be seen three-quarters of a mile without any lights. The man Griffith went on board ship by the name of Charley; that was the only name by which I knew him.

176 Q. What kind of side-lights were the brig's side-lights?

A. They were good.

Q. How good were they?

A. Of the best kind.

Cross-examined:

I am not a married man. When in port, I will be found most likely at the Sailors' Home; I generally stop there; I am not now attached to any vessel. I had been out to California five years before the time when I joined the William Edwards; I returned from there last May; I had not been sea-faring out there; before that I had followed the sea. I had never sailed in any vessel carrying side-lights before the William Edwards; I had no experience in regard to such lights, except what I had gained on this voyage. I did not know the master, mate, or any of the crew, before I joined the William Edwards. I was 2d mate from the time the brig left there until she was lost; I commanded our

watch all the time; I had three men in my watch; my watch on the night of the collision commenced at six, and continued until
177 8 o'clock; during this, my watch, I was aft by the wheel; I stood on the starboard side; I was there most of the time; when I was not there I was on the forward end of the poop. The pilot was taken aboard before that watch commenced; the brig was sailing about five knots during that watch; there was a head sea, a rough, short sea; the wind was strong; you could not carry the light sails very well; the light sails had been taken in that afternoon; during my watch, the wind was a little harder than in the afternoon, when the light sails were taken in, and when I came out on deck after the collision the wind was about as it had been when my watch ended; it was a puffy wind, from about north-northeast, which caused the brig to vary her course about two points. During my watch on deck at this time, I did not take down the lights to trim them. During this dog-watch, the captain was on the poop-deck, aft by the wheel; I left him there when I went below;
178 I went below immediately after I was relieved; my berth was in the house; I was not out again until after the collision. The house on deck is entered by doors on each side; I entered my room through a door on the port side, about the centre of the house; my watch all went below at that time. The steward generally took care of the lamps, on the voyage, when they were put below; that is, after they were taken down in the morning; I lit the lamps that night; I lighted them before they were put up; I had to go up in the rigging about six feet from the poop-deck to put up the lamps.

Q. How do you know that the side-lights were of the best kind?

A. Well; I was told so; I knew they were good lights myself; I refer to the whole; the lamp-light and all.

Q. How do you know the oil was the best kind?

A. It was tried at Havre by the captain; I did not see it tried.

Q. When you say that the brig's lights could be seen three or four miles that night, you mean that when burning brightly they could be seen that distance?

A. Yes, sir.

179 Q. Do you now refer to the night as it was when you came on deck after the collision.

A. Yes, sir.

Q. Do you think that a vessel that night could be seen ¾ of a mile without a light?

A. Yes, sir; I am pretty well accustomed to judge of distances at sea in the night. What experience I have in this has been acquired while I have been engaged in navigation. The brig had a list of about two streaks during my watch. I was not called before the collision. The blow awoke me; I immediately went out on deck, without putting on my boots or my coat. When I came out on deck, I saw some of the men of the other watch. I don't know what they were doing—all were in a hurry. I first cut away one side of the boat which lay on the main hatch athwart ship, and then went aboard the steamer. Charlie cut away the other side. I looked at my watch before I went out of my room; it was hanging up by the light in my room, and I took it with me, and by my watch it was then ½ past eleven. When I set my
180 watch by the sun, about a week before, it was too fast, but I don't recollect how much. On the voyage from Havre I had not been accustomed to trim the side-lights during my watch; they generally burned through my watch. I don't recollect any one of my watch' in which I had to trim them. As far as I know, the side-

lights had generally burned throughout the night without being newly trimmed. For the last week before the collision the brig had been averaging about seven knots an hour. The wind, during that time, had not been the direction before stated all the time, but it had been more to the eastward; it had been about east. I don't know how long the wind had been blowing from the direction it was when I went below. We had tacked ship about four o'clock that afternoon. We had not been on a tack towards the Jersey coast before we went on the tack at four o'clock, as before stated. The general course of the brig for the last week had been about northwest. We had not seen land before the collision. Barnegat light was not in sight when I went below; I
181 saw it after I came on deck; I don't know how it bore; it was about eight miles off, I should think. I noticed when the steamer struck the brig—it was about six feet aft the main rigging, on her starboard quarter. The effect of this blow was to bring the starboard side of the brig around alongside the starboard side of the steamer, the brig's head lying towards the stern of the steamer. They held together about four or five minutes from the time of the collision. Then the steamer backed off from her, which left the brig with her sails aback. I did not observe how far the steamer backed off. I suppose it was about thirty or forty minutes afterwards before the steamer's boat was launched, to go to the brig. Before the boat was launched the brig's red light had come into view. I had not been off the steamer's deck before. I went off in the steamer's boat to the brig. I went on board of the brig. We first got the stern boat clear; that lay on the main hatch 'thwart ship; that was the one I had cut loose. We then
182 clewed some of the sails up; we clewed up the foresail, topsail, and top-gallant sail. The mate sounded the pumps, and he reported seven feet of water. We did not work the pumps. We did not get all of our clothes; we got a few of them. The red light was taken on board the steamer by the captain; there was nothing done with it while he had it in charge, that I know of. I returned in the brig's boat. The captain was not in that boat.

I am thirty-five years old, and have followed the sea, in all, fifteen years, making voyages to Europe and China, and coasting, also. I have never been higher than 2d mate; I have been second mate six years, including the voyage in question. I know that by the collision the steamer struck the green lamp, because it was broken, and the captain got the ring when we returned to the brig. I think the side lamps would hold about a pint of oil, and *and* that would be burnt down considerably in the morning during the voyage.

his
CHARLES + GREEN.
mark.

Sworn to before me this 30th day of September, 1865.
183 [SEAL.] F. F. MARBURY, JR.,
Notary Public City & County of New York.

(Endorsed:) U. S. district court. Archibald M. Pentz & al. vs. The Steamer Ariadne, &c. Deposition of Charles Greene. Man & Parsons, libel'ts proct's.

184

185 U. S. district court.

ARCHIBALD M. PENTZ & AL.
vs.
THE STEAMER ARIADNE, &C.

PETER OLSEN, being duly sworn and examined as a witness for the libellants, testifies—Mr. Parsons appearing for the libellants, and Mr. Owen for the claimants:

I was a hand before the mast on the William Edwards at the time of the collision with the Ariadne; I was in the captain's watch. I am now shipped on a vessel ready to go to sea. I went below at eight o'clock; the brig's lights were then burning bright. Did not then come on deck till the collision; then found the port light burning and the starboard one knocked in where the steamer struck us. I then went on the steamer, and afterwards returned to the brig in *in* the steamer's boat, and found the port light still burning. There was no fog or mist that night; it was a little cloudy—overcast—not so very dark.

186 Cross-examined:

I live at Philadelphia when at home. I am a Norwegian. I joined the brig in New York, and went in her to New Orleans, thence to Havre, and thence for New York. When she was lost I was in the 2d mate's watch which went below at *at* 8 o'clock; I turned right in and went to sleep; I was awakened by one of the seamen and the 2d mate, after the collision; I never knew anything of the collision until after the vessels came together. I saw the lights set that night; they were set betwixt six and eight o'clock in the dog-watch; they were set a few minutes after six; they were not taken down during my watch; they were *were* well trimmed and burned bright when I went below. It was customary to trim the lamps once or twice in a watch; when they did not burn well we took them down & trimmed; we generally took them into the cabin; sometimes they would get smokey, and sometimes the wick would want picking up. There was no particular wind that
187 would make the lamps smoke; the lamps never went out altogether; they would get so they would not burn well, and then we took them down and trimmed them, and this would occur two or three times in a *a* watch sometimes. I was at the wheel during the dog-watch; the wind during that time was about N.-n'west, I guess; I did not notice particular; she was on her starboard tack and close-hauled, and heading, by compass, I guess about west-northwest—I don't recollect, and was going about four knots, I should think—betwixt four and five. I was relieved by Bill Oakley, who was in the mate's watch. I was in the boat that went to the brig; I saw the red light burning after we got on board; I think the captain took it down, but I am not certain; we took it in the boat with us; it burned in the boat until we got aboard the steamer, and was burning then; I don't know who handed it up, I remember it was burning in the boat; I can't say for certain whether it was burning when we got aboard the steamer; I did not
188 see the captain do anything with the lamp while in the boat, and, as far as I know, he did not do anything with it.

Re-direct:

Q. Did you ever see those lights trimmed more than once in a watch?
A. I have seen them once or twice, or three times, sometimes.
Q. How often did you ever see them trimmed more than once in a watch?

A. I have seen them trimmed three times in a watch a good many nights; five or six nights I have seen them trimmed more than once in a watch.

Re-cross:

I have seen the lights so trimmed five or six nights on that voyage from Havre.

PETER OLSEN.

Sworn to before me this 22d day of December, 1865.
[SEAL.] EDWARD J. OWEN,
Notary Public N. Y. County.

(Endorsed:) U. S. district court. Archibald M. Pentz et al. vs. The Steamer Ariadne, &c. Deposition of Peter Olsen. Man & Parsons for lib'l'ts.

189 U. S. district court.

ARCHIBALD M. PENTZ & AL.
vs.
THE STEAMER ARIADNE, &C.

THOMAS LIBBY being duly sworn and examined as a witness for the libellants, testifies—Mr. Parsons appearing for the libellants, & Mr. Owen for claimants:

I was a hand before the mast on the brig W'm Edwards at the time of this collision. I was in the 2d mate's or captain's watch. I am now about to go to sea—am shipped. I went below at 8 o'clock, and did not then come on deck till the Ariadne struck us. When I went below our lights were burning; they were burning brightly. When I came on deck the port one was burning; the starboard one had been knocked down by the steamer. I immediately went aboard the steamer. Subsequently went to the brig in the steamer's boat, and found the port light still burning. It was then taken on board steamer. Up to the time
190 I went on the steamer, there was no fog or mist that night. It was overcast; not so very dark.

Cross-examined:

I am going to sea in the Amanda Guion. I am going from New York to Galveston. I don't know whether the vessel will come from there here, or not. I am twenty-one years old. I live in Warren, Maine. I joined the William Edwards in New Orleans, and went in her from there to Havre, & sailed in her from Havre for New York, which was the voyage on which she was lost. I was in the 2d mate and captain's watch. I went below at 8 o'clock; all my watch went below. My watch commenced at six o'clock, and continued until eight. The lights were set in my watch; they were set by the 2d mate; he got them from the cabin; I saw him set them; I was standing on the main deck; I went on the lookout when he put the lights up; they were not taken down during my watch; we used to trim them about once in a watch—four hours; I did not trim them; they were taken down to be trimmed; they were taken into the cabin; it is the steward's duty to take care of them; I don't know what kind of oil we burned. I went off from
191 the steamer *to the steamer* to the brig. I saw the red light; it was burning, and burned until we got most on board of the

steamer; the captain had it; I don't know how it came to go out; when we came to the steamer it was passed on board; I don't know who passed it on board; I don't know who took it down from the main-rigging; it burned bright while the captain had it in hand in the boat; we did not have any other light in the boat than this; we had a lantern, but it was not burning; I don't know that the red light was put out on purpose; it went out of its own accord. The captain, pilot, three hands, and the 2nd mate, were in the boat with me; they all went off from the steamer with me. We found the vessel in a sinking condition; the mate sounded the pumps and found six feet and a half of water in her; we talked of staying by her, but we found her in such bad condition, and going down so fast, that we were obliged to leave her. The steamer lay off from us about half a mile; I understand that we were
192 about twelve miles from the land. I did not go to sleep until about ten o'clock. I did not see any of the watch on deck come into the forecastle while there. We were not called before the collision; it was the collision that woke me up; there were three of us in there, and we were all asleep. The brig, with a good whole-sail breeze, will sail about ten knots; she will lie within six points to the wind; she is easy to steer; she carries a weather-helm; she answers her helm very quickly. It was pretty dark when we went off in the boat, and was so when I first came on deck. We saw the brig go down while we were in the boat, returning to the steamer; we had got about half way from the vessel to the steamer; she rolled over on her beam ends, and then sunk. I had conversation with some of the steamer's hands after I came back from the brig; this was while standing up forward. The vessel will make ten knots an hour on either tack, when the wind
193 is on her quarter, and when close-hauled she will make about seven knots; that is her best.

THOMAS LIBBY.

Subscribed and sworn before me this 22d day of December, 1865.
[SEAL.] EDWARD J. OWEN,
Notary Public N. Y. County.

(Endorsed:) U. S. district court. Archibald M. Pentz & al. vs. The Steamer Ariadne, &c. Deposition of Thomas Libby. Man & Parsons, for libel'ts.

194

195 *Consent to examine witness de bene esse.*

U. S. district court.

ARCHIBALD M. PENTZ & ALS.
ag'st
THE STEAMER ARIADNE, HER ENGINES, &C.

It is hereby consented that Abraham G. W. Rankin, Nathan B. Pharo, Isaac T. Wolff, Antonio Hendrickson, William Mallory, be examined de bene esse in this cause, as witnesses on the part of the claimants, at the office of Owen, Gray & Owen, No. 72 Wall street, on Friday, the 16th day of February, 1866, at ten o'clock in the forenoon of that day; that the deposition of said witnesses, when sworn to before a commissioner of deeds, or a notary public, may be read in evidence by either party on

the trial, reference, and after proceedings in this cause, with the like effect, subject to all exceptions to the competency and admissibility of the testimony, as if the same had been taken before a judge of the court, under an order issued for that purpose; that the same need not be filed unless required by ten days' written notice, but may remain in the
196 posses'ion of the claimant's proctors, a copy thereof being furnished to the libellant's proctors.

Dated New York, February 15, 1866.

MAN & PARSONS,
Libel'ts Proct's.

197 U. S. district court.

THE STEAMSHIP ARIADNE } *ads.* ARCHIBALD M. PENTZ, &C. }

SOUTHERN DISTRICT OF NEW YORK, *ss:*

NATHAN B. PHARO, of Barnegat, New Jersey, being duly sworn, says:

That he is 34 years of age; seafaring man—steamboating; been following the water 19 . I was on board the Ariadne at the time; had been on board of her since the fourth of the month of the collision. I was second mate of her at the time of the collision; at the time of the collision it was the captain's—my watch on deck; I stood his watch. I know Antonio Hendrickson; he was on watch on the look-out at the time. I know William Mallory; he was at the wheel. I know Riley, says M. O.; he was standing near the look-out, on deck; I was on the pilot-house. We were heading S. W. ¼ west at the time of the first seeing the brig. The brig when I first saw her, I can't say how far she was off at the time, but not over ⅛ of a mile; I could not tell how she
198 was heading when I first saw her. The brig had no light; there was nothing to prevent me seeing the light of the brig if it had been there; if there had been a green light, or any light on the brig, could have told which way she was heading; from the time I first saw her until the collision there was nothing to prevent my seeing the starboard light if she had one on her; her port light would have the offside. We hit her about 30 feet abaft the main rigging. When I saw the brig I asked the man on the look-out if he could tell how she was heading; he said he did see her, but could not tell how she was heading, as she had no lights; she bore from us then two points on our port bow. I then rang the bells to slow her; sung out to him to ask if he saw any lights, and slowed and backed her at the same time; our propeller was backing at the time of the collision. When the first bell rang the captain, who was in a room right alongside of me, jumped in, picked up his glasses, looked, and ordered the wheel hard astarboard; he helped to put it so. At the time we saw this vessel we were going, I
199 should judge, about eight knots. Our vessel had two side-lights and masthead light, all brightly burning—the red on the port side of our vessel, and green on the starboard, and a white light at the masthead. The night was dark and overcast; could see a light that night, I should judge, about two miles.

Q. Could you see a vessel without a light farther than you saw this? (Objected to.)

A. No, sir. When I saw the *the* vessel I was leaning my head, and

head and shoulders, out of the pilot-house as far as I could get. I did that to look out. I was on the port side of the wheel. It was the round part of the pilot-house I was looking out of. The front part of the pilot-house is not squared—is a little rounded. It was a cold night. We were going off before the wind; had no sails set. From the windlass to the stem of our vessel is about 15 feet.

Q. If there had been a green light on the brig would you have seen it?

(Objected to.)

I certainly should, as my attention was directed right to it.

200 Being cross-examined:

I am still attached to the Ariadne. The Ariadne has two masts. Can't tell exactly how far the pilot-house is from the stern. I judge it is as much as 30 feet. I don't think it is 50 feet. I am pretty sure it is not 50 feet, though not quite sure. When I first saw the brig she was about two points on our port bow. I had to look about two points on our port bow, which made me look over the forward part of our vessel.

Q. Did you not, to see the brig when you first saw her, look over the part of your vessel on which the look-out was stationed?

A. No, sir; I saw her on our port bow.

Q. Repeated?

A. I saw the brig about two points on the port bow.

Q. Was the place where the look-out was stationed on the pilot-house the nearest to the brig when she was first seen by you?

A. The place where the look-out was stationed was the nearest.

Q What was the first thing you did upon first seeing the brig?

201 A. I sung out to the look-out immediately, "Do you see that sail, and how is she heading?"

Q. Did he reply, and, if so, what?

A. He said he did; could not tell how she was heading, for he saw no light.

Q. What did you next do?

A. In the meantime I struck a bell, and as soon as he replied, struck another, and then two.

Q. Is that all that passed between you and the look-out?

A. I think I have stated all; I asked him two or three times if he could see any light yet.

Q. Do you mean that you were not sure the brig had no lights which could be seen?

A. I was sure, and yet I asked the question.

Q. Do you mean, then, to say that you rung the four bells as quick as you could after seeing the brig?

A. No, sir; there was a second or two between the first and second, and the same between the second and third, which, with the fourth, were struck as close together as could be, and all this talk was during the time of the last three bells being struck.

202 Q. And yet there was not time to stop the Ariadne before she hit the brig; is that what you mean to say?

A. Yes; that is what I mean to say; at the same time that the first bell was struck, I starboarded our wheel, and the captain got to the wheel before she was starboarded, just looking through his glass at the brig first. By this time the brig was very near. The next thing, I ran around to our starboard side, and had a full view of her main rigging, which had then lapped our starboard bow, and knew then there was

going to be a collision; called the attention of all hands to look if there was a light; they said no, looking right down on her, and then we struck.

Q. Can you be sure you did not hit the brig within ten feet of her main rigging?

A. Yes, sir; and will be sure of it.

Q. Are you as sure of that as that she had no starboard light?

(Objected to.)

A. As to the distance abaft the main rigging at which *which* we struck her, I won't be sure, but I will be sure about the light.

203 Q. You mean, then, to say that you won't be sure you hit the brig more than ten feet abaft the main rigging?

A. Yes; I won't be sure as to that.

Q. Did you give the order to starboard the wheel?

A. No, sir; the captain. The bell striking started the captain on the first bell; the order to starboard the wheel was before the second bell rung; I had been in the pilot-house all the watch to the collision, except stepping out once or twice for a minute.

Q. When you say you called out to all hands to see if the brig had a starboard light, whom do you mean by all hands?

A. I meant the man at the wheel and the captain, both of whom were with me in the pilot-house, Hendrickson, the look-out, and Riley, who also stood forward.

Q. When your wheel was ordered starboarded, how did the brig bear from you?

A. From one to two points on the port bow.

Q. Did you then know how she was heading?

A. I did not.

Q. Was not the effect of starboarding your wheel to throw the head of your vessel right towards where you saw the brig?

204 A. I grabbed the wheel, running around to *to* the starboard side, and putting it very hard wherever I could, and at this time could see plainly that she was crossing our bow, and thought we could clear her by running very close under her stern; we had got very near to her.

Q. What became of the brig's port-lamp after it came on your vessel?

A. I never saw it at all on the Ariadne.

Q. Do you know who has got it now?

A. No, sir.

Q. Have you ever seen it in the possession of Mr. Mallory?

A. I have not.

NATHAN B. PHARO.

Sworn to before me this 16th day of February, 1866.

JOHN J. RICE,
Notary Public N. Y. County.

205 U. S. district court.

STEAMER ARIADNE
ad's
ARCHIBALD PENTZ, &C.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

ANTONIO HENDRICKSON, being duly sworn, says:

That he is 28 years of age; is a seafaring man, and lives at 54 West

street; that he was on board the Ariadne at the time of the collision with the brig William Edwards. I was on the look-out; was standing forward of the windlass, and walking across the deck, looking out. I had been on the look-out two hours; I had no other duty to do but look out; I was attending to that. It was the second mate's watch at the time; he was in the pilot-house. Our vessel was a propeller. Bill Mallory had the wheel at the time; another man by the name of Riley in own watch; he was on deck, walking the deck, aft of the windlass. The night was foggy; rain first part of the night. I could see a vessel without a light about the eight' of a mile that night; I could see a
206 good light on a vessel that night two miles; I could not see a vessel without a light more than an eighth of a mile that night; my eyesight is good; I saw the brig; the second mate saw her first; he was just looking off the starboard bow at the same moment; he asked me if I saw that vessel; the same moment I turned and saw the vessel, and I said, "Yes, sir." He asked me if I could see where she was heading. I told him, "No, sir;" I could see no *no* light, and could not tell how she was heading; she had no lights on her; I could see no lights; there was nothing between myself and that vessel to prevent my seeing.

Q. If there had been a light on her, do you think you would have seen it?

(Objected to.)

A. Yes, sir. The vessel, when I first saw her, bore about two *two* points on our port bow; I could not tell, from anything on her, how she was heading.

Q. When you told the second mate that you could not tell which way she was heading, was anything done with your engine?

(Objected to as suggesting the answer.)

207 A. Yes; I heard the bell to the engine, and could feel the ship stop. This was at the same moment that I answered the second mate that I could not see how the brig was heading.

Q. If there had been a green light on that brig, would you have seen it?

(Objected to.)

A. Yes, sir; I heard, just as the brig was close under our bows, some one on her sing out, "Hard up." I heard no hail or anything from her before that.

Being cross-examined, he says:

I had been on the Ariadne about five month'; joined her the last of August, 1865. We left New York at 3 o'clock; don't know at what time the collision took place. It was a Wednesday the day we left New York; don't know the day of the month; it was the month before January. I am a Norwegian; I was on the look-out; I went on at ten o'clock; had been on an hour and a half at the time of the collision. There were three men and the mate in the watch. I am still on
208 the Ariadne; she is a smart boat; she handles very easily; she stops very quick; don't know in how many yard' you could stop her; should suppose you could stop her in twice her own length; don't know how long she is. I was not at the wheel that watch; I was on deck all the time, from the time I went on till the collision, walking about in different places fore and aft of the ship. I went as far aft as the wheel-house—the pilot-house I mean. What I mean is, I was walking up and down from the forward part of the ship to the pilot-house. This I did from 8 to 10 o'clock, when I went on the look-out; then I went to the forward part of the windlass; I was then looking out, nothing

else; walking about across the deck, on the main deck. There is a little platform in the bow of the boat about two feet higher than the main deck. I did not stand on this. The rail or bulwark of the vessel was only four inches higher than the platform. I was on the starboard side of the Ariadne when my attention was first called to the brig.
209 There was not much difference, the deck being only five feet wide. I was on the starboard side, looking over the starboard bow; the second mate stood in the pilot-house, alongside the man at the wheel; I had been looking out on the starboard side about three minutes—will swear it was not longer than that; before that I was looking over the port bow. The second mate saw the brig before I did. The reason was, because I had not been looking in the direction towards her; and when he asked me if I saw her, I had to turn around to see her. I had no difficulty in seeing her when I turned around and looked at her. It was at this moment that one bell rang, so that I did not see the brig until one bell rang, and I felt the ship stop. We hit the brig pretty hard, cut clear into her; if we had been at full speed, we would have gone right through her.

Q. You say your vessel could be brought to a stop in about two of her lengths; what part of that distance did she run from the time your bell rang, to the collision?

A. I suppose about a length of our vessel; it don't take her
210 very long to run a length; if the mate had not called my attention to the brig I should have seen before the collision, as I was just going to turn around.

Q. How many seconds do you suppose it takes the Ariadne to run a length?

A. I don't know.

Q. Did you make any report to the pilot-house, or second mate, about the brig at all, of any kind, to the collision?

A. No, sir; I was starboard, on the look-out to report vessels; I did not report the brig, because I did not see her; the second mate saw her first. The second mate asking me if I saw the brig, my looking, seeing her, the mate asking me if I could tell which way she was going, my answering "no," all happened just quick as it could, and the bell rang, just as we stood. I saw her. I remained standing where I had been standing before, about 30 feet from the stem of the Ariadne, right up to the collision; did not change my place. The pilot-house was about 50 feet abaft the stem of the Ariadne; forward of where I stood was the little plat-
211 form which I have mentioned; the jib on the bowsprit. We hit the brig just aft her main rigging, about ten feet or so; it was a dark night, and I can't tell exactly; did not hit her just where her light would have been; she could have had her light in her main rigging; I don't know whether the Ariadne started the brig's main rigging. I did not move from my place till after the men of the brig began to come over on our bow.

Q. Did you see the brig's green light?

A. No, sir.

Q. Could you have seen it unless you had been looking?

(Obj' to.)

A. Of course I could not. The rain stopped about nine o'clock; it was a little foggy all night; don't know the course our vessel was heading; the collision, I believe, was off Barnegat; I saw Barnegat light.

his
ANTONIO + HENDRICKSON.
mark.

Sworn to before me this 16th day of February, 1866.

JOHN J. RICE,
Notary Public New York County.

212 U. S. district court.

STEAMER ARIADNE, &c., *asds.* ARCHIBALD M. PENTZ.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

WILLIAM MALLONEY; born in the city of Dublin; hail from New York; I am no relation of the claimant; am 26 years of age; have been to sea about 14 years; I was on the Ariadne at the time of the collision; I was at the wheel; had been so from 8 o'clock until the collision; that was about half-past 11. My attention was first called to the brig by the second mate asking the man at the look-out if he saw the vessel ahead; I did not hear him make the answer. I looked, and my course, taking an odd look; I saw nothing at that time, not even the vessel; I first saw the vessel as she was coming across our bow, some distance off; she had no light up, (the brig;) I could see no light on her at the time; I saw no light on her up to the time of the collision.

Q. If she had a light, could you have seen it?

(Objected to.)

213 A. I think I should; I saw several lights that night of schooners in-shore of us; the look-out was Antonio Hendrickson; he was on look-out; Amos Riley was also forward; I can't say exactly the position he stood; could not see a vessel far that night without a light; the weather was pretty cold, but we could not feel it going down before the wind; we had no sails on her stowed.

Q. Was there anything to prevent your seeing a light, if there had been one on the brig?

(Objected to.)

A. No, sir; I could see better than the man on the look-out forward, as I was higher up than he was.

Being cross-examined:

From the main deck to the wheel-house you go up two steps, and then one step up to the wheel-house. I am still attached to the Ariadne; had made three trips on her befor' the collision. When I first saw the brig, I looked right over our bow to see her, and by the way she was heading she was going in for the land, and as we were going down, that would make her crossing our bow—square across; that was the

214 first I saw of her; I looked over our port bow to see her; she was about a point on our port bow; I saw the brig just a moment before the first bell struck; the second mate struck first one bell, and then a second bell, and then rung again; there was not a second between; it was done as quick as lightning, and I starboarded my wheel as quick as lightning too; the captain jumped and helped me; the whole thing was as quick as lightning; the Ariadne swung about a point a half or two points, before we struck; the helm was put over hard astarboard as quick as it could be done, and at the time she would be swung a point and a half or two points, she struck; the Ariadne her helm very quick, steering easy; I should think the ship would swing a point and a half or two points in a second or two—certainly not over three—that is my judgment.

WILLIAM MALLONEY.

Sworn to before me this 16th day of February, 1866.

JOHN J. RICE,
Notary Public N. Y. County.

215 U. S. district court.

THE STEAMER ARIADNE
ads.
ARCHIBALD M. PENTZ.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

ABRAHAM G. W. RANKIN, of Jersey City, New Jersey, engineer, being duly sworn, says:

That he is thirty-eight years of age; been an engineer for the last eleven years—following the water as engineer; was on the Ariadne at the time of the collision; was at the engine on watch at the time of the collision. I was not on deck at the time of the collision. The first I had was four successive bells; the signal to back strong is two successive bells, making four bells in all. I did obey them as quick as possible. I felt the jar of the collision slightly at that time. I was standing at the engine; the engine was at the time of the collision backing hard; it had been backing between three and four minutes, as near as I can tell; if I should say it had made three to four hundred turns back, could not tell exactly. There was no delay on my part in answering those
216 signals and stopping and backing the vessel. I did come on deck after the collision. The brig was then across our bow. I did not see the green lamp of the brig on board our vessel. I saw a lamp thrown over after, out of the boat. I saw the red lamp of the brig. That was handed to me by a person. I supposed to be the light of the brig. I put that lamp in the closet under my desk. I did not take any particular notice of it. Nothing was done, so far as I know it, with that lamp from the time I got it until it passed out of my hands. I saw a lamp thrown out of the brig's boat alongside of us. (Lamp shown.) I can't positively tell whether this be the lamp or not; it looks like the one. The lamp is marked XX C. D. on the slide.

Being cross-examined, he says:

I first saw the frame of a lamp thrown out of the boat. There was no glass in it. I was holding a light overboard. I can't describe any part of the frame, except that I saw it was a lamp taken up by the ring and thrown overboard. I saw the bottom and top part of it, that is all, and the ring. I can't say what kind of a lamp *of* it was.

A. G. W. RANKIN.

Sworn to before me this 16th day of February, 1866.

JOHN J. RICE.
Notary Public N. Y. County.

217 U. S. district court.

THE STEAMER ARIADNE
ads.
ARCHIBALD PENTZ.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

ISAAC T. WOLFF, of Philadelphia, machinist, being duly sworn, says:

I am 22 years of age; have been going to sea since 19th October,

1865; I was in the engine-room when the gong rung to slow; got one bell to slow; as soon as that was rung the engineer told me to go up and see what it was. As I got to the door of the engine-room there came the bells to stop and back; the bells were obeyed immediately. Then I walked from the engine-room door to the side of the vessel; the engine-room door is about 30 to 40 feet from the pilot-house; I came out on the starboard side; there is but one door to the engine-room. I looked over the side and saw nothing. I then walked to the after part of the pilot-house, and saw the reflection on the rails of the brig; the brig was then about bending, that is, coming right round the bow of the steamer; I could not tell how far she was off. I walked a few steps further forward, and she struck. I saw no light on her what-
218 ever up to the time of the collision. If I had seen them, it would not have required me to go to the forward part of the steamer. I did see a lamp thrown over from the boat of the brig by one of them. I could not see what kind of a one, but I could see it by the light of a lamp I had gone and got.

Being cross-examined;

The engine-room is about 15 by 20 feet. I was about 12 feet from the door when the first bell came, which was one bell. I am sure it was not two. There were four bells—one to slow, one to stop, and two to back hard—all rung before I got from the place where I stood when the first bell rung out of the door. To get on the main deck I went up two pair of stairs.

ISAAC T. WOLFF.

Sworn to before me this 16th day of February, 1866.

JOHN J. RICE,
Notary Public N. Y. County.

(Endorsed:) U. S. district court. The steamer Ariadne ads. Archibald M. Pentz & o'rs. Deposition of A. W. Rankin, N. B. Pharo, J. T. Wolff, A. Hendrickson, William Malloney, on behalf of claimants. Owen, Gray & Owen, cl'ts proctors.

219 U. S. district court.

THE STEAMSHIP ARIADNE, HER ENGINES, &C., Charles Mallory, claimant, *ads.* ARCHIBALD M. PENTZ & OTHERS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

AMOS RYLEY, a witness produced and examined on the part of the claimant, being duly sworn, deposes and says:

I am twenty-eight years of age. I am a seafaring man. I have followed the sea about 13 years. I live at Mystic, Connecticut. I was an able seaman on board of the steamer Ariadne, at the time of the collision between her and the brig William Edwards in December, 1865. I was on deck at the time; I was in the captain's watch which commenced at eight o'clock, and continued there until ten; then I went forward on the port side between the windlass and the pilot-house, and walked there fore and aft. Hendrickson was on the look-out; William Mallory was at the wheel. About eleven o'clock my attention
220 was called to the brig by hearing the 2nd mate ask the man on the look-out if he saw that vessel. The look-out said he did. I

then looked up, and I saw her about two points on our port-bow. I should judge she was then about an eighth of mile distant. I am not, however, a very good judge of distances, but I should not think she was distant more than that. I could not then make out which way she was heading. I could just see the loom of the vessel enough to make out that it was a vessel. I saw no light upon her. There was nothing to obstruct my view; the decks were perfectly clear, and if there had been a light upon her, I certainly could have seen it. My eye-sight is good—better than the average, I think. I did not think particularly about the light when I looked at her to see if it was there, but if there had been one there, it would have struck my eye. It was a very good night for seeing lights. It was very dark, but there was no fog or mist.

I should judge that a good light might then and there have been
221 seen from a mile to two miles at least. What called my attention to the fact that there was no light was the 2d mate's asking the man on the look-out if he saw any light, and he answered "No, sir." This was after I first looked up and saw the vessel, but very shortly after I then looked with reference to seeing a light, but could not see any. I heard no orders from the 2d officer to the man at the wheel or otherwise. I felt the steamer stopped very soon after I first saw the vessel. As soon as the machinery stops we can feel it in an instant. After the enquiry of the man on the look-out if he saw a light, and when I looked up at that time as above-stated, I could not see which way the vessel was heading. I could not then see her hull plainly. I did not go to the brig after the collision, but remained on the deck of the steamer. I stood next to the chief engineer when the lamp of the brig was handed up from the boat to him. It was the port lamp—the red one. I noticed that the upper part of the glass was smoked considerably so as in a measure to dim the light, though that light could have been seen.
222 It was lighted when it came on board, and that is the way I came to see.

Cross-examined:

Q. You have said in your direct ex'n that you did not think particularly to see if there was a light on the brig when you looked, and then later you stated that you did look with reference to seeing if there was a light? Which statement do you *swear* [mean] to have beleived?

A. In the first place when he asked if the look-out saw the vessel, I looked at her then without reference to the light, but when he asked the man if he saw the light, then I looked for that. The Ariadne was brought to a stop as quick as she could be after the call of the mate. There was not time to bring her to a full stop. Should judge the steamer was still going 2 or 3 miles an hour.

Q. Do you know how many seconds were required to reduce her speed to 2 or 3 miles an hour?

A. No, sir.

Q. Could it not be done in 20 seconds?

A. No, sir; I think not. I am no judge.

223 Q. Could it not be done in the time she would run twice her length or less.

A. I think not; I am almost positive of that. The Ariadne was something like 200 feet long.

Q. Could not the Ariadne be very easily brought to a full stop in much less than the eighth ($\frac{1}{8}$th) of a mile?

A. I should judge not; I don't know; I am not sufficiently acquainted with engineering to tell that.

Q. Can you be at all accurate as to the distance from the Ariadne of the brig when you first saw her?

A. No; I can't.

Q. Had you and Hendrickson been talking together before the mate's call?

A. No, sir; we were not together. He was in sight from me, dark as the night was. He was not more than 20 feet off.

Q. How far can a good light be seen on such a night? State the probable distance, in your judgment.

A. Not more than two miles.

Q. Describe the port lantern of the brig, which you say you saw?

A. It was a red light. The glass was smoked. It was, I believe, a screen circular lantern, with a red glass.

Q. Of what was it made?

A. Brass, as near as I could judge; will not be positive as to that, tho'.

224 Q. Was the red glass clear or opaque glass?

A. It was as opaque as glass can be; it was similar to the glass in all such lanterns.

Q. In whose employment are you?

A. Mr. Mallory's.

Q. In what vessel?

A. The Gen'l Sedgwick.

Q. On what vessels have you been since this collision?

A. The bark Mary E. Packer, the sch'r Oregon, the Ariadne, and the General Sedgwick, where I am now. When I left the Ariadne I declared I would never go in that employ again; but it was a question of bread and butter, and I could get no other employment, and so I had to. Then I went back to the General Sedgwick. This was on Feb. 22, 1868; my brother is 2d mate of her, and telegraphed for me, and I went and joined her. Mr. Mallory did not know I was going in her till I had joined her, so far as I know. I live at Mystic, where Mr. Mallory lives; have known him about 16 years. Since the collision I have been at home, at Mystic, a little more than eight months.

AMOS RYLEY.

Sworn before me this 28th March, 1868.

EDWARD L. OWEN,
Notary Public N. Y. Co.

225 (Endorsed:) U. S. district court. The Steamship "Ariadne," her engines, &c., Charles Mallory, claimant, ads. Archibald M. Pentz and others. Deposition of Amos Riley, on part of claimants. Owen, Nash & Gray, proct's for claimants.

A copy of the within deposition admitted March 30, 1868.

MAN & PARSONS,
Libel'ts Proct's.

226

227 U. S. district court.

THE STEAMER ARIADNE, HER ENGINES, &C., *ads.* ARCHIBALD M. PENTZ AND OTHERS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

GEORGE B. CRARY, a witness produced and examined on the part of the claimants, being duly sworn, says:

I am a sea-faring man, and am forty-five years of age; I am about to sail on a voyage from here to San Francisco; I have been master of vessels for twenty years and upwards. I was master of the steamer Ariadne at the time of the collision between her and the brig William Edwards in December, 1865. I had been in my room prior to coming out at the time of the collision; I had been there from half an hour to an hour; my room is adjoining the wheel-house; I was about four feet from the man at the wheel, and about six feet from the officer in the pilot-house; there is a door which communicates right into the wheel-house; my attention was first called to the other vessel by hearing the officer of the deck ask the look-out if he saw which way that
228 vessel was heading; I jumped immediately into the pilot-house and took my night glass, which was right at hand in the pilot-house, and saw the vessel, and that she was standing across us to the northward and westward; there was no light to be seen on her; I should say she was from 100 to 150 yards off at the time I first looked at her. You could not tell, with a naked eye, what description of vessel she was, nor how she was heading. You could see something looming there. Prior to this the bells had been rung to slow and to stop. I ordered the wheel to starboard, and assisted in heaving it there; this was to try and go astern of the brig; during that time the engine had been reversed.

Being cross-examined, he says:

I cannot say whether I had been asleep or not, I heard the first bell rung to slow. The bells to stop and reverse followed in very quick succession as could be. I heard the pull of the bell—not the bell. Those orders were obeyed immediately. I can't say which came first, the first bell or the question from the officer of the deck to the look-out; this
229 was all the work of an instant; we struck the brig before we could overcome the headway of the Ariadne. The shortest time in which the Ariadne could be brought to a stop from full headway, would be two to four of her lengths. I cannot say whether I heard any response from the look-out to the question of the officer of the deck. The question was, Can you see that vessel? or see which way she is heading? can't say which; it was one of the two; that was the first thing I heard; I did not hear the brig reported by the look-out. The look-out was nearer the brig than the officer of the deck; probably not over 15 feet nearer. I did not see the brig till I seized my night-glass; I can't say now what called my attention to the direction in which to look; I can remember that I first looked in the right direction; I immediately took hold of the wheel as quick as I could get to it; I was standing within two or three feet of the wheel while looking. The instant I made out the vessel I started to starboard the wheel; did not, I presume, keep my hands on the wheel till the vessel struck; I
230 cannot remember letting go the wheel before they struck. We got the wheel over before the collision, and had changed the course of the Ariadne, I should say two points or more; don't know as I can give any judgment about it. We changed *because* all we could, before the collision. I can't tell what I did do with my glass when I took hold of the wheel; it was an ordinary marine glass—night-glass like the opera glass—with a shade that projects from the frame.

GEO. B. CRARY.

Sworn to before me this 5th March, 1868.

[SEAL.] EDWARD L. OWEN,
Notary Public N. Y. Co.

(Endorsed:) U. S. district court. Steamship Ariadne, her engines, &c., ads. Archibald M. Pentz & al. Testimony of Capt. Crary, for claimants. Owen, Nash & Gray, proct's for cl'm'ts.

We admit service of a copy of the within testimony, March 6, 1868.
MAN & PARSONS,
Lib'l'ts' Proctors.

231 U. S. district court.

THE STEAMER ARIADNE, HER TACKLE, &C., *ads.* ARCHIBALD M. PENTZ & AL.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

HANDFORD NICHOLS, of Black Rock, Connecticut, mariner, being duly sworn, says:

That he was mate of the steamer Ariadne at the time of the collision with the brig William Edwards. I don't recollect the date without looking at the log-book; it was about 11 o'clock in the night; our vessel was bound from New York to Apalachicola with cargo and passengers. I did not see the collision; at the time of the collision I was below asleep; when I came on deck our vessel was backing; she was held to the brig by her back stay; I saw the starboard side of the brig; there was nothing from where I was to intercept my view of the brig; I did not see any light on the brig. Our boat went to the brig after I went on deck; it was taken to the brig by her crew. I received a lamp
232 next day from our chief engineer—a side-light; I had seen nothing of it the night before; I put the lamp in my room; I kept it there until we returned from Apalachicola to New York; I then handed it to Mr. Mallory (Charles H.;) I handed it to him in his office in Maiden Lane; I had examined the lamp, but he looked at it after I took it to the office; he looked at it in my presence; there was no oil; there might have been very little, not worth speaking of; I did not notice the condition of the wick; I did not take the lamp away; I have not seen it since.

X-'d for the libellants:

By about 11 o'clock, I mean eleven o'clock New York City time; we had left New York that day at 4 o'clock; we had run about 40 miles; that is, within 5 miles of the distance, allowing that it is 17 miles to Sandy Hook and 43 to Barnegat, within about 12 miles of which I judge the collision took place. There was no delay in going down the harbor; It did not take over 15 or 20 minutes to get away from the dock; the ordinary way is to start to go fast as soon as you get clear of the
233 vessels in the North River.

Q. When you came on deck could you see the port-light of the brig if it had been burning?

A. No; it would be screened by the side of the screen, and there were too many sail set.

Q. Did the steamer hit the brig about the place where her starboard, light should have been?

A. I don't know where it should have been; the steamer hit the brig just aft the main rigging.

Q. Was not that a proper place for the side-light?

A. Yes; that was a proper place.

which was eleven o'clock, then went on the look-out, relieving a hand by the name of Bill. I saw Bill a minute or two after I relieved him, and then he disappeared. When I went on the look-out my position was on the main deck, aft the forecastle. I first saw the Ariadne lights when I first went on the look-out. She was then, as I should judge, about four points on our starboard bow, and about seven miles distant. I did not report her because her light was in sight when I went on the look-out. When I was on the look-out I noticed our starboard-light, but not until the Ariadne was very near to us. I stepped to the side of the brig, thinking that our light might not be burning, and
241 that the Ariadne might, therefore, run into us, and there I looked at our starboard-light. The light was very dim. I was, I should judge, fifty feet from the light when I looked at it, and could see it plainly. As the light was then burning, I should not think it could be seen over two hundred feet. I think that light had been taken down during my watch. The signal-lights had bothered us for two or three nights before the night of the collision, because they had to be trimmed, and went out. I was on the watch some part of every night.

Cross-examined by George Pratt, esq., of counsel for the libellants:

I was examined in New York, in reference to this matter, in December, A. D. 1865.

Question. Is the paper read to you this morning, (and which is hereto annexed, marked A,) the minutes of your examination taken at that time?

Answer. I should think it was.

Question. Did you not promise to sign and swear to that deposition the following morning?

Answer. I don't remember of anything being said about sign-
242 ing until I got through. I don't remember of promising either to sign or swear to the deposition.

Question. What was the date of the collision?

Answer. December 13th, 1865, I think.

Question. Who sent for you to go to New York to make this statement, in December, 1865?

Answer. Captain Sidney Ashby.

Question. Why did you come away without signing that statement?

Answer. Because it was not true.

Question. Why did you make an untrue statement at that time?

Answer. I was influenced by the captain.

Question. Did you receive any word from Mr. Mallory in reference to testify in New London before U. S. commissioner Converse? (J. A. H., *U. S. Com.*)

Answer. I did not.

Question. Who informed Mr. Mallory that you were coming up here to testify to-day?

Answer. I did.

Question. Why did you inform him?

Answer. I thought it would be a good plan to have both lawyers here.

Question. When did you first know that Mr. Mallory was interested in the Ariadne?

Answer. I couldn't tell the time.

Question. Can you tell when you first conversed with either
243 of the Messrs. Mallory in regard to the testimony you were to give in this case?

Answer. No, sir.

Question. What color was the starboard-light of the brig?

Answer. A green one. I made a mistake in saying before that it was blue.

Question. Where did you stand on the main deck, when you saw the light just before the collision?

Answer. I stepped to the rail and looked outside of the rigging.

Question. Did you go before or aft of where you had been standing when you looked at the light; and at what point on the rail did you stand, when you looked over and saw the light?

Answer. I was walking forward, back, and across the vessel most of the time during the watch. When I saw the light I was forward of the fore rigging.

Question. What was your duty as look-out?

Answer. To report the lights as we made them.

Question. Do I understand you to say that from the time you went on the look-out to the time of the collision you made no report whatever of the Ariadne?

Answer. Yes.

Question. In regard to all other points as given in your former statement, except those contradicted or affected in *in* any way by
244 your testimony given here, are they true to the best of your recollection?

A. They are not all of them true. (J. A. H., *U. S. Com'r.*)

Re-examined by E. H. Owen, esq., of counsel for the claimants:

Question. Before you gave the statements contained in the paper marked "A," hereunto annexed, were you sworn?

Answer. I was not.

Question. Did you see or have any conversation with me or either of the Mallorys in New York on that occasion?

Answer. Only what I had in the office while I was under examination.

JOHN A. MORGAN.

JAMES A. HOVEY,
U. S. Commissioner.

245 UNITED STATES OF AMERICA,
District of Connecticut, ss:

I, James A. Hovey, a commissioner duly appointed by the circuit court of the United States for the district of Connecticut, in the second circuit, under and by virtue of the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidivits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817, and the act, entitled "An act to establish the judicial court of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material in the cause in the caption of the said deposition named, and that he lives at a greater distance from the city of New York, the place of trial, than one hundred miles.

I further certify that, on the twenty-seventh day of February, in
246 the year of our Lord one thousand eight hundred and sixty-eight, I was attended by George Pratt, esq., of counsel for the libellants,

and E. H. Owen, esq., of counsel for the claimants, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] JAMES A. HOVEY,
U. S. Commissioner.

247 U. S. district court.

ARCHIBALD M. PENTZ & AL.
vs.
THE STEAMER ARIADNE, &C.

JOHN MORGAN, being duly sworn and examined as a witness for the libellants in this cause, testifies, (Mr. Parsons appearing for the libellants, and Mr. Owen for the claimants :)

I live at Pearanrock, which is about 3 or 4 miles from Mystic, Connecticut; about 120 miles or so from here. I have come here for this examination, and expect to return as soon as I am examined. I was a hand before the mast on the brig William Edwards at the time she was lost. At the time of the collision I was on the look-out, stationed on the main deck forecastle. (J. A. H., *U. S. Comm'r.*) I came on deck that night at 8 o'clock, took my trick at the wheel until 10, then went on deck until eleven o'clock, and at eleven I went on the look-out, and remained there till the collision. I relieved at the look-out a man
248 we called Bill. Don't know what his other name was. The man who relieved me at the wheel on board ship went by the name of Charley. I don't know what his right name was. He was always called Charley. I first reported the Ariadne. It was not a great while, probably 2 or 3 minutes after I went on the look-out. She bore about 4 points, I should think, on our starboard bow. I sung out, "A light on the starboard bow," to the mate who stood on the win'ward side of the . He answered, "All right, I see it." This was about a half hour before the collision. When I speak of time, I speak of our vessel's time; the time we had on board. That is the time we go by. I first saw the steamer's white light, and then afterwards saw her red light. I knew she was a steamer by the white she had hoisted aloft. I kept watching her up to the collision. Our vessel kept her course up to the collision, I suppose, full and bye. She was sailing full and bye, and I should think did not change up to the collision. She did
249 not change her course so far as I could see. When I reported the steamer, the brig had her lights set—a red light on the port side, and a blue light on the starboard side. When I say a blue light, I mean that was the color. The lights remained so up to the collision. They were not taken down during the time I was on the look-out. During this time they were burning bright, and did so, up to the collision. When I was on the main deck, before eleven o'clock, I was some of the

time in the boatswain's locker, and did not see the lights taken down at all that evening. The steamer hit us just aft the main chains, a blow a little bit sideways—glancing; her stern being a little nearer our bow than our stern; she stove a hole into us. I went on board the steamer over her side from forward of our main rigging. It was kind of exciting *time*, about that time. The steamer then got clear of us. Our brig naturally luffed up to the wind, and swung around after we
250 cleared from her, so that I could see the red light from the steamer. I can't tell anything about her direction at the time, but so I could see the red light. It was then burning bright. The starboard-light, I suppose, was knocked down. The ring was fast to the rigging after the collision. I saw one of our men take it off when we came aboard the brig. We lowered a boat from the steamer, and I went aboard the brig in her. Found the port-light in its place, burning. It was took down and carried on board the steamer. The starboard-light was not in its place. Found its ring fast to the rigging. Saw nothing of the rest of the lamp. It was close by when the brig was struck by the steamer. Nothing had happened to the main rigging on the starboard side that I know of. I did not examine to see.

Cross-examined:

I am not a married man. I am twenty-five years old. I have been a fishing and at home some four seasons before I joined the William
251 Edwards. I joined her in New York, and went in her to New Orleans, thence to Havre, and thence for New York. I was an ordinary seaman. I signed the articles. I was in the mate's watch, which came on deck at 8 o'clock on the night of the collision. I went to the wheel, and stood there until ten o'clock. The brig was heading while I was at the wheel about N. west northwest-by-north, and northwest-by-west. The wind was variable. The ship's course varied between two points, that is, between northwest-by-north, and and northwest-by-west. Did not take in any sail after eight o'clock, when I came on deck, until after the collision. I was relieved at ten o'clock by Charley. While I was at the wheel, from eight to ten o'clock, the mate was there. When I was relieved I went down upon the main deck, near the forecastle, on the port side. I went into the boatswain's locker, and remained there until six bells. I then came on deck,
252 and went upon the forecastle. I went there to look out. I relieved Bill. I don't know his other name. Bill went down on the main deck when I relieved him. I saw him for a few minutes afterwards standing on the main deck. I saw him standing there two or three minutes after I relieved him. After that I never noticed him. (J. A. H., *U. S. Com'r.*) I stood on the forecastle some of the time, against the capstan, forward of it, and some of the time I walked the deck. I was not particular how I walked, whether fore & aft or athwart the ship. I cannot tell how I walked. The most of the time I stood by the capstan. I walked around some for exercise to keep me warm. It was a middling cold night. I had not my overcoat on, but I had my undercoat on, and a suit of oilers. It was not raining. It was not thick or misty. I think I know what sails we had on that night. We had the jib, jib-staysail, foresail, lower topsail, upper topsail, top-gallant sail, & mainsail. That is all. This is a rough guess, but the forward
253 part of the capstan might have been 12 feet, more or less, from the stem of the brig. The capstan stands in midships, but I don't know how far from the foremast. I think I had not taken that position by the capstan when I first saw the Ariadne. I was on the

forecastle when I first saw her. I was on the starboard bow when I reported her. I then walked down towards the capstan, and I think I went across over to the port side to see if I could see any lights on that side. I saw the light-house light, but none other. I can't tell exactly how the light-house bore from us. I stopped on the port side a moment. I did not stand there long. I walked around. I can't tell where I went next. I was standing at the time of the collision on the forecastle, on the starboard side. I don't know how far I was from the capstan. While I was on look-out I was forward of the foresail. I was not off the forecastle from the time I went on the look-out until after the collision.

254 The foot of the foresail was fastened on the starboard side, and the rope which led through the hook was made fast to the capstan. I should judge that the hook was about abreast of the capstan. (J. A. H., *U. S. Com'r.*) You might get behind the foresail, a little piece of it, very little, without going off the forecastle deck. I was not behind any part of the foresail after I went on the look-out. It was probably two minutes after I went on the look-out before I reported the steamer. When I saw the steamer I sung out, "Light on the starboard bow." I got an *an* answer to my hail from Mr. Williams, the chief mate. He said, "All right, I see it." The steamer's light bore at that time about four points off the *the* brig's starboard bow. I can't tell how far off she was. After that I went over on the port side, as already stated; after I returned from the port side I cannot tell where I was all the time. I was walking around, and leaning against the capstan.

Q. When did you next observe the steamer after you reported her?

A. The next time I looked up that way.

Q. When did you next look up that way?

255 A. My attention was over the brig's bow the most of the time, backwards and forwards, on her starboard and port side, looking to see what I could see. Whenever I looked where the steamer was, she came into my view. When my eye fell short of her, I did not see her. I did not make any other report of the steamer than that already mentioned. I observed that the steamer changed her bearing as she approached.

Q. Did she appear to be less or more than four points on your starboard bow?

A. I can't tell you how she changed.

Q. Can you say that she changed her bearings at all?

A. Yes, sir; I should think she did.

Q. Which way?

A. I can't tell you which way.

Q. When did you first discover that there was danger of a collision?

A. I did not think there was any danger until she got most into us. I thought she would see us. She was close to us before I thought she would strike us. I was at that time on the starboard side; I stood still from that time until the collision; I did not hail; I heard some one hail from

256 aft; I don't know who it was that hailed. The hail was before I came to the conclusion that she would strike us; my attention was not called to the steamer by that hail. (J. A. H., *U. S. Comm'r.*) I was watching her; when I thought there was danger of a collision I did not hail or do anything; I had done my duty. I don't know how many points the steamer bore at this time off our starboard bow; I went up on the starboard side of the steamer; I clambered up. I clambered up off from our brig, forward of the main chains. The steamer struck the brig aft the main chains a glancing blow. She struck aft the main rigging; I can't tell exactly how much aft. I was one who went in the boat to the brig,

I stayed aboard of the small boat awhile, and kept off the side of the brig. The boat lay on the starboard side of the brig. I afterwards went aboard the brig; I went to get my clothes, which were in the forecastle; I went into the forecastle and remained there long enough to get a pair of pants, a suit of clothes, and a pair of these boots; I then
257 threw my bag into the boat and then helped take in the sails; we took in all the sails before we left her; we clewed them. This took some 8 minutes, more or less; I don't know that any one pumped the ship while aboard. After the sails were clewed I went back to the boat, then they launched our boat off the main hatch, and part got into her. The boat had been carried a part of the time on the main hatch, and the other part of the time on the davits. I went back in the steamer's boat. The captain, pilot, Peter, and myself were in that boat; I think that was all. I believe there was a passenger in with us. The red light was carried in our boat; I don't know who took it down; we carried a light from the steamer which we brought back, I think; I don't know that the other boat had any light. I worked on the jib, jib-stay-sail, foresail, lower topsail, upper topsail, and top-gallant sail in clewing them up. (J. A. H., *U. S. Comm'r.*) I worked under 2d mate's orders. I can't tell exactly how long we were on the brig at the time. I don't know which one of our men took off the ring from the rigging; as I have testified on direct examination I was on deck when it was
258 taken off. I was at that time looking up at them for the moment. I am not positive whether it was before or after I got my things from the forecastle. The red light which was taken down was taken on board the steamer; the captain had charge of it while in the boat; I think I passed it up on board the steamer; I could not tell whether it was burning or not, I never noticed passing up the things; it was burning while we were coming from the brig.

Q. Have you not stated to some person or persons that, after you went on the look-out that night, you were part of the time behind the foresail?

A. No, sir; nothing of that kind.

Q. Did you sign the protest?

A. No, sir.

Q. Were you not in a notary's office in this city for the purpose of signing a protest?

A. Not that I know of; I can write my name. I have not been asked to sign a protest; the captain took me into an office in Wall street for the purpose of giving some statement about the collision. I gave a very little of the circumstances; that was written down by a person;
259 I did not sign that paper; I signed nothing. I think I did not state to that person that I was behind the foresail at any time after I went on the look-out. I have been only seven months at sea, aside from the fishing at home, and on the coast.

Re-direct:

I did not see what the person in the Wall street office wrote down; I don't know whether he read it to me or not; I can't tell whether or not he wrote down what I said.

Sworn to before me December 27, 1865.

(Endorsed:) U. S. district court. Archibald M. Pentz & o'rs vs. The Steamer Ariadne, &c. Deposition of John Morgan, for cl'm'ts. Filed March 3, 1868.

260

261 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 23d day of June, in the year of our Lord one thousand eight hundred and sixty-eight—

Present, the Honorable Samuel Blatchford, district judge.

ARCHIBALD M. PENTZ & OTHERS
vs.
THE STEAMER ARIADNE, HER ENGINES, &C. } 19—347.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libel filed in this action be, and the same hereby is, dismissed, with costs to be taxed against the libellants.

And it is further ordered that, unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, the stipulators for libellants' costs pay into the registry of the court the amount of their stipulation, and that the clerk distribute the proceeds in satisfaction of the taxed costs.

(S'd) SAM'L BLATCHFORD.

262 (Endorsed:) Vol. 19, No. 347. United States district court for the southern district of New York. Archibald M. Pentz & als. vs. the steamer Ariadne, her engine, &c. Man & Parsons, proct's lib't. Owen, Nash & Gray, proct's for cl'm't. Final decree. Libel dismissed, with costs. Filed the 23d day of June, 1868.

263 U. S. district court, southern district of New York.

ARCHIBALD M. PENTZ & AL.
ag'st
THE STEAMER ARIADNE, &C.

Please to take notice that the libellants intend to appeal from the final decree of this court in this cause.

Dated July 13, 1868.

MAN & PARSONS,
Libel'ts' Proc's.

To OWEN, NASH & GRAY, Esq.,
Cl'm't's Proct's.

GEO. F. BETTS, Esq.
Cl'k Dist. Court.

The time to serve and file the within notice was duly extended to any extent.

OWEN, NASH & GRAY,
Proct's for Cl'ts.

(Endorsed:) 19—457. U. S. district court. Archibald M. Pentz
264 & al. a*g*'st The S. S. Ariadne, &c. No. of appeal. Man & Parsons, libellants' proctors, 64 Wall st. To Geo. F. Betts, esq., cl'k dist. c't. Filed as of July 13, 1868, Nov. 30, 1868.

265 Circuit court of the United States, southern district of New York.

ARCHIBALD PENTZ, JACOB PENTZ, JOHN Williams, William H. Guion, Jane H. Cortes, and William J. Donalds, libellants and appellants,
against
THE STEAMER "ARIADNE," HER ENGINE, machinery, boats, tackle, apparel, and furniture, &c., claimant and appellee.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The appeal of the above-named appellants respectfully shows that, on the 29th day of December, 1865, the said appellants exhibited their libel in the district court of the United States for the southern district of New York against the said Steamer Ariadne, her tackle, &c., in a cause of collision, civil and maritime, for the recovery of damages sustained through the fault of the said steamer by the brig "William Edwards," of which they were owners, and for the recovery of
266 damages for destruction of the cargo laden on said brig, and belonging to other owners, to the amount, in the whole, of sixty thousand two hundred dollars. The appellants further show that, subsequently William Edwards, who was one of the libellants in this cause, has died; that said steamer was arrested on process issued on said libel, and was discharged on a claim and answer filed by Charles Mallory, praying that the said libel might be dismissed, with costs, as by reference to the said libel and answer may more fully appear.

That the said cause came on to be heard before the *the* Hon. Samuel Blatchford, judge of the said district court, on or about the 18th, 20th, 21, & 22d days of May, 1868, upon the depositions and proofs adduced by the respective parties, and the said judge, having advised thereon, on the twenty-third day of June, 1868, made a decree in said cause, whereby it was, among other things, sentenced or decreed that the said libel be dismissed, with costs against said libellants.

267 And these appellants are advised and insist that the said decree is erroneous, and that the libellants are entitled to the relief prayed for in said libel.

Wherefore these appellants appeal from the whole of the said decree in favor of the said claimant to the next circuit court to be held in the said district, and on the said appeal they intend to have the said cause heard anew in the circuit court, on new allegations and proofs to be produced in the said circuit court; and they pray that the record and proceedings may be returned to the said circuit court, and that the said decree, and every part thereof, may be reversed, or such other decree thereon be made as to the said circuit court shall seem just, and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

MAN & PARSONS,
Proctors for Appellants.
JNO. E. PARSONS, *Advocate.*

268 (Endorsed:)

Due and timely service of within petition of appeal is hereby ad-

mitted, the libellants' (appellants) time to serve and file same having been extended by stipulation.

Dated October 16, 1868.

OWEN, NASH & GRAY,
Proct's Cl'ts and Appellees.

19—457. U. S. circuit court. Archibald M. Pentz & al. vs. The Steamer "Ariadne," &c. Petition of appeal. Man & Parsons, proctors. Filed Oct. 22, 1868.

269 *Bond for costs and damages on appeal.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

ARCHIBALD M. PENTZ & AL., LIBELLANTS & appellants,
vs.
THE STEAMSHIP ARIADNE, HER TACKLE, &c., &c., Charles Mallory, claimant & appellees.

Know all men by these presents that we, William J. Donald and William H. Guion, are held and firmly bound unto the above-named claimant, in the sum of one thousand dollars, to be paid to the said claimant; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named Archibald M. Pentz & al., libellants, have prosecuted an appeal to the circuit court of the United States for the southern district of New York, to reverse the judgment rendered in the above-entitled suit, by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute such appeal to effect, and answer all damages and costs if they fail to make such appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

W'M J. DONALD, [L. S.]
W'M H. GUION. [L. S.]

Sealed and delivered, and taken and acknowledged, this 21st day of October, 1868, before me.

EDWARD L. OWEN,
U. S. Commissioner for Southern District of New York.

270 UNITED STATES OF AMERICA,
Southern District of New York, ss:

W'm J. Donald, of No. 125 East 16th street, New York, and W'm H. Guion, of East Chester, Westchester Co., New York, being duly sworn, each deposes and says that he is worth the sum of one thousand dollars, over and above all his just debts and liabilities.

W'M J. DONALD.
W'M H. GUION.

Sworn to this 21st day of October, A. D. 1868, before me.
EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

(Indorsed:) Vol. 19, page 457. U. S. circuit court. A. M. Pentz & al. vs. The Steamship Ariadne, &c. Bond for costs and damages. Man & Parsons, proctors appellants. Filed this 22d day of October, 1868.

Bond approved as to form and manner of execution and as to sufficiency of the sureties, time to give same having been extended to Oct. 24th, 1868.
OWEN, NASH, & GRAY,
Proctors for Cl'ts & Appellees.

271 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the 16th day of February, in the year of our Lord one thousand eight hundred and seventy—
Present, the Honorable Lewis B. Woodruff, circuit judge.

ARCHIBALD M. PENTZ & AL., LIBELLANTS & appellants,
vs.
THE STEAMER ARIADNE, RESPONDENT & appellees.

The appeal for the district court coming on to be heard.
Mr. Parsons reads from the apostles evidence on part of libellants and appellants.

272

273 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the 17th day of , in the year of our Lord one thousand eight hundred and seventy—
Present, the Honorable Lewis B. Woodruff, circuit judge.

A. M. PENTZ & AL., LIBELLANTS & APPELLANTS,
vs.
THE STEAMER ARIADNE, CLM'TS, RESP'TS, & appellees.

This cause being still on hearing—
Mr. E. H. Owens reads from the apostles evidence on part of respondents and appellees.
Mr. John E. Parsons argues the case on the part of libellants and appellants.
Mr. E. H. Owen argues the case on the part of the respondents and appellees.
Mr. Cha's Donohue argues the case on the part of respondents and appellees.
Mr. John E. Parsons is heard in reply.
C. A. V.

274

275 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the seventh day of May, in the year of our Lord one thousand eight hundred and seventy—

Present, the Honorable Lewis B. Woodruff, circuit judge.

THE STEAMER "ARIADNE," HER ENGINES, tackle, &c., *ads.* ARCHIBALD M. PENTZ & ALS.

The appeal of the libellants in this cause coming on to be heard—

After hearing E. H. Owen, advocate for the said claimants and appellees, and John E. Parsons, esq., advocate for the libellants and appellants, and, after due deliberation thereon, it is now ordered adjudged that the decree of the United States for the southern district of New York, made and entered in this cause on the 23d day of June, 1868, dismissing the libel with costs, to be taxed, be, and the same is hereby, in all things affirmed.

276

277 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the 14th day of May, in the year of our Lord one thousand eight hundred and seventy—

Present, the Honorable L. B. Woodruff, circuit judge.

THE STEAMER ARIADNE, HER ENGINES, tackle, &c., *ads.* ARCHIBALD M. PENTZ & ALS.

The appeal of the libellants in this cause coming on to be heard, after hearing John E. Parsons, advocate for the said libellants and appellants, and E. H. Owen, advocate for the appellees; and, after due deliberation thereon, it is ordered, adjudged, and decreed that the decree of the district court of the United States for the southern district of New York, made and entered in this cause on the 23d day of June, 1868, dismissing the libel herein with costs, be, and the same is hereby, affirmed.

And it is further ordered, adjudged, and decreed that the said claimants and respondents do recover against the libellants and appellants their costs in the said district court, taxed at three hundred and thirty-five and $\frac{12}{100}$ dollars, with interest thereon from the 23d June, 1868, to the date of this decree, amounting to $379 41; and, also, their costs in this court, taxed at one hundred and fifty dollars and fifty cents, and which said costs, in the aggregate, amount to 529 91.

278 And it is further ordered, adjudged, and decreed that, unless the last-mentioned sum, with interest, be paid, or an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the claimants and respondents have execution to collect the same according to law and the course and practice of this court.

(S'd) LEWIS B. WOODRUFF,
Circuit Judge.

279 In the Supreme Court of the United States.

ARCHIBALD M. PENTZ, JACOB PENTZ, JOHN S. Williams, William H. Guion, Jane A. Cortis, & William J. Donald, libellants & appellants,
vs.
THE STEAMER "ARIADNE," HER ENGINE, MACHINERY, boats, tackle, apparel, furniture, &c., Charles Mallory, claimant & appellee.

To the honorable the Supreme Court of the United States:

The appeal of Archibald M. Pentz, Jacob Pentz, John S. Williams, William H. Guion, Jane H. Cortis, and William J. Donald, survivors of William Edwards, the above-named libellants, respectfully shows: That, on December 29, 1865, they, with the said William Edwards, who has since died, filed their amended libel in the district court of the United States for the southern district of New York, against the said Steamer Ariadne, her engines, machinery, tackle, &c., in a cause of collision, civil and maritime, for the recovery of damages sustained by them through the loss of the brig William Edwards, of which they were the owners, by collision with the said steamer Ariadne, by her fault,
280 as alleged by them, and for the recovery of damages for the loss by the said collision of cargo laden on said brig, and belonging to other owners, to the amount, in the whole, of sixty thousand two hundred dollars; that the said steamer was arrested upon process issued upon the libel filed in said cause; that the said Charles Mallory thereupon appeared, and filed his claim to the said steamer, her tackle, &c., and she was thereupon discharged, upon his entering into stipulation for costs and for value of the said steamer and her freight, pending at the time of the said collision; that, on February 1, 1866, the said Charles Mallory filed his answer, praying that the said amended libel might be dismissed with costs, as by reference to the said amended libel and answer may more fully appear.

That such proceedings were thereupon had in the said cause that the same, on May 18, 1868, came on to be tried before the Honorable Samuel Blatchford, judge of the said court, upon the depositions and proofs taken therein, and the testimony and proofs adduced upon the trial by the respective parties, and the said judge having advised thereon, on June 23, 1868, made his final decree, whereby it was, among other things, ordered, adjudged, and decreed that the said amended libel be dismissed with costs against said libellants.

That thereupon these libellants duly appealed from the said final decree to the circuit court of the United States for the southern
281 district of New York, and the said cause was removed thereby, and that such proceedings were thereupon had on the said appeal, as that, on February 15th, 1870, the said cause was tried anew in the said circuit court, before the Honorable Lewis B. Woodruff, judge of the said court; and that, on May 13, 1870, the said circuit court made a final decree in said cause, whereby it was, among other things, ordered, adjudged, and decreed that said decree of the said district court be affirmed, with costs of the said district and circuit courts, amounting, together with interest added, to five hundred and twenty-nine $\frac{91}{100}$ dollars.

That the said decrees of the said district court and of the said circuit court are, as these appellants are advised, erroneous, and ought to be reversed.

These appellants, therefore, appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that said decree of said circuit court, and the amended libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay; that the said Supreme Court will proceed to hear the said cause anew, that these appellants may be permitted to produce further testimony and proofs therein, and may have a commission for that purpose, and that the said decree of the said circuit court and every
282 part thereof may be reversed, and a decree made for the recovery by these appellants of the damage sustained as aforesaid with costs, and that such other or further decree may be made by the said Supreme Court as shall be just.

MAN & PARSONS,
Proctors for Libellants & Appellants.

JNO. E. PARSONS, *Advocate.*

(Endorsed:) Supreme Court of the U. S. Archibald M. Pentz & o'rs vs. The Steamer Ariadne, &c. Petition on appeal. Man & Parsons, appellants' proctors. Jno. E. Parsons, advocate. Filed Sept. 8, '70.

283 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

ARCHIBALD M. PENTZ, JACOB PENTZ, JOHN S. Williams, William H. Guion, Jane N. Cortis, and William J. Donald, libellants and appellants,

vs.

THE STEAMER "ARIADNE," HER ENGINE, MAchinery, boats, tackle, apparel, furniture, &c., Charles Mallory, claimant & appellee.

Know all men by these presents that we, Archibald M. Pentz, John S. Williams, and William H. Guion, are held and firmly bound unto the above-named claimant and appellee in the sum of two thousand dollars, to be paid to the said appellee; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 28th day of July, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named Archibald M. Pentz, Jacob Pentz, John S. Williams, William H. Guion, Jane A. Cortis, & William J. Donald have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ARCH'D M. PENTZ. [L. S.]
JNO. S. WILLIAMS. [L. S.]
W'M H. GUION. [L. S.]

Sealed and delivered, and taken and acknowledged this 28th day of July, 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

284 UNITED STATES OF AMERICA,
Southern District of New York, ss:

John S. Williams, of Riverdale, in Westchester County, and State of New York, and William H. Guion, of New York City, in said State, being duly sworn, each depose and say that he is worth the sum of four thousand dollars over and above all his just debts and liabilities.

JNO. S. WILLIAMS.
W'M H. GUION.

Sworn to this 28th day of July, A. D. 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

We approve the above bond and the sufficiency of the sureties thereto. July 28, 1870.

OWEN, NASH & GRAY,
Claimants' Proctors.

(Indorsed:) Vol. , page . U. S. circuit court. Archibald M. Pentz & o'rs vs. The Steamer "Ariadne," &c. Bond for costs and damages. Man & Parsons, app'l'ts' proctor'.

I approve of the within bond and the sufficiency of the sureties thereto.
Dated September 7, 1870.

SAM'L BLATCHFORD.

Filed this 8 day of Sept., 1870.

285 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to Charles Mallory:

Whereas Archibald M. Pentz, Jacob Pentz, John S. Williams, William H. Guion, Jane H. Cortis, and William J. Donald, libellants and appellants, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Charles Mallory, against said Archibald M. Pentz, Jacob Pentz, John S. Williams, William H. Guion, Jane H. Cortis, and William J. Donald, and have filed the security required by law:

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the seventh day of September, 1870.

SAM'L BLATCHFORD.

286 (Endorsed:) U. S. circuit court. Archibald M. Pentz & als. vs. The Steamer Ariadne, &c. Citation. Man & Parsons, appellants' proctors, 56 Wall st., N. Y.

Due and timely service of a copy of the within citation is hereby admitted.
Sept. 7th, 1870.

OWEN, NASH & GRAY,
Proc's for Cl'ts & Appellees.

287 Circuit court of the United States for the southern district of New York, in the second circuit.

ARCHIBALD M. PENTZ ET AL.
vs.
THE STEAMER ARIADNE, HER ENGINES, &C. } Case.

The libellants, Archibald M. Pentz and others, having appealed from the decree made in favor of the claimants in the district court of the United States for the southern district of New York, the cause came on to be heard anew in this court, before the Honorable Lewis B. Woodruff, circuit judge, at a circuit court held for the southern district of New York, at the city of New York, on the sixteenth and seventeenth days of February, one thousand eight hundred and seventy.

And, on the hearing the libel, the petition of E. and J. Willetts & Co., and the order permitting them to prosecute as co-libellants, the answer and the petition and notice of appeal, filed in the said district court, having been read, the counsel for the said Archibald M. Pentz and others, the libellants and appellants, read in evidence from the apostles, on the part of the libellants, the direct examination of the witnesses

288 John R. Williams, William Oakley, Griffith Jones, Sidney Ashly, Peter Gray, Charles Green, Peter Olsen, Thomas Libbey taken by deposition.

And the counsel for the claimants and appellees read in evidence the cross examination of each and every of the said witnesses from said apostles.

And thereupon the counsel for the said claimants and appellees read in evidence from said apostles the direct examination of the witnesses Nathan B. Pharo, Antonio Hendrickson, William Mallorey, A'raham G. W. Rankin, Isaac T. Wolf, Amos Ryley, George B. Crary, Hanford Nicoll, John A. Morgan, taken by deposition.

And the counsel for the libellants and appellants read in evidence the cross-examination of each and every of the said witnesses from said apostles.

And thereupon the counsel for the libellants and appellants read in evidence from the said apostles, the minutes of the district judge on the trial before him, of the direct examination of Hippolyte Dardonville and of Sidney Ashby.

And the counsel for the claimants and appellees read in evidence from said apostles the minutes of the district judge of the cross-examination of said witnesses.

289 And, thereupon, the counsel for the libellants and appellants read in evidence on behalf of the said E. and J. Willetts & Co., from said apostles, bills of lading for thirty-two and seventy-nine hogsheads of china.

And thereupon the counsel for the libellants declining to read in evidence from said apostles the minutes of the district judge of the testimony of George W. Mayhew on the trial before him, the counsel for the claimants and appellees offered to read the same from the apostles, as evidence on his part; to which the counsel for the libellants and appellants objected,

and thereupon the court overruled said objection ; to which the counsel for the appellants duly excepted.

And the counsel for the claimants and appellees then read the said direct and cross-examination of said George W. Mayhew.

And thereupon the claimant's case being closed, the counsel for the libellants and appellants offered to contradict the said witness George W. Mayhew by a written statement, and to prove by a witness then present that it was the same paper testified by the said George W. Mayhew to have been made by him.

And the counsel for the claimants and appellees objected on the ground that the evidence was not by deposition. The court sustained the objection, and the counsel for the libellants and appellants duly excepted.

290 And therewith the evidence closed and the cause was summed up by the respective counsel and submitted to the honorable judge, who, on the day of 1870, made his decree herein, affirming the decree of the district court with costs.

(Endorsed:) United States circuit court, southern district of N. Y. Archibald M. Pentz et al., app'l'ts, vs. The Steamer "Ariadne," &c., appellee. Case. Man & Parsons, lib'l'ts' proctors, 56 Wall st., N. Y.

It is hereby stipulated that the return to the Supreme Court in the above cause be amended by adding the within as part of the minutes of the trial in the circuit court.

Dated Jan. 10, 1871.

OWEN, NASH & GRAY,
Proctors for Appellees.
MAN & PARSONS,
Proctors for Appellants.

Filed Jan'y 14, 1871.

(Indorsement on cover:) No. 83. Archibald M. Pentz, Jacob Pentz, J. S. Williams, et al., appellants, vs. The Steamer "Ariadne," her engine, &c., Charles Mallory, cl'm't. S. New York C. C. U. S. Filed 3d November, 1870.

Wm. J. Reid, Law and Job Printer, 116 Fulton Street, New York.

IN THE SUPREME COURT

OF THE UNITED STATES.

ARCHIBALD H. PENTZ, *et al.*, *Appellants*,
v.
THE STEAMER "ARIADNE," &c., CHARLES MALLORY, Claimant, *Appellee.*

Brief for Appellants.

APPEAL from a decree of the Circuit Court of the United States for the Southern District of New York, affirming a decree of the District Court, dismissing a libel filed by the appellants to recover damages sustained through the total loss of their brig "William Edwards," her freight and cargo, by collision with the "Ariadne."

The collision took place about eleven o'clock of the night of December 13, 1865, off Barnegat, on the Jersey coast, some eight miles from land. The brig was on a voyage from Havre to New York; had the wind from N. by E. to N. E. by N., and was sailing close hauled as near as she could lie to the wind, heading W. N. W. or N. W. (fol. 122).

The steamer was bound from New York to Apalachicola; had left New York the same day, about four o'clock in the

afternoon (fol. 232), and was making about eight miles an hour; the brig was making about four or four and one-half miles. The steamer was first made from the brig about five points on her starboard bow (fol. 86). The brig continued her course without change to the collision, the steamer coming into her with such force as, though she was a new vessel, to cut the "William Edwards" down to the water's edge and clear through into her cabin (fol. 88), causing her to sink in a very short time.

The brig carried her lights in her main rigging in a side box. The bow of the "Ariadne" hit the starboard side of the "William Edwards" just where the lamp was set, carrying away the rigging and destroying the lantern.

The brig claims upon the evidence that the "Ariadne" had no lookout—that if one of her crew was stationed on the watch he was not attending to his duties; and that the brig was first seen from the steamer in the instant of the collision.

The steamer claims that the brig had no green light properly burning on her starboard side; that she was not required to be looking out for vessels carrying no lights; that she was free from fault; and that if she should be adjudged to have been in any respect in fault, the brig was also in fault, and that the damages should be apportioned.

Answer, fol. 57.

First Point.—The defence of the steamer is not that the brig carried no green light, but that the light had become smoked, and was burning dimly (answer, fol. 56). Reserving, however, the question of any fault on the part of the brig, I proceed to show that even if the brig had carried no lights at all, proper vigilance on the part of the steamer would have prevented a collision.

The position of the appellee that his steamer was under no obligation to look out for vessels not carrying lights, a position somewhat favored by the learned Circuit Judge (*The Ariadne*, 7 *Blatch.*, 211), is wholly untenable. The want of a

vigilant lookout, properly stationed, and attentive to his duties, presumes fault on the part of steamboat.

Genesee Chief v. *Fitzhugh*, 12 *How.*, 443.
The Neptune, *Olc.*, 483.

And the neglect of one vessel to show lights does not vary the obligation of the other to observe the rules of navigation, and to adopt all reasonable and necessary precautions to prevent the collision.

Chamberlin v. *Ward*, 21 *How.*, 548.
The Gray Eagle, 9 *Wallace U. S. Sup. Ct. Rep.*, *p.* 505.
The Carrol, 8 *Wallace U. S. Sup. Ct. Rep.*, *p.* 302.
Inman v. *Reck*, *The City of Antwerp, and the Friedrich*, 37 *L. J., Adm.*, 25; 2 *L. R. P. C.*, 25.

The language of the Court in Chamberlain *vs.* Ward, is —"all reasonable and *practicable* precautions;" and in the case of the "Gray Eagle," "all practicable precautions."

This principle is a necessary deduction from the cardinal principle which prevails in Admiralty Courts to divide the loss where each vessel is in fault.

The Catharine v. *Dickinson*, 17 *How.*, 170.

Many cases can be suggested of the want of a light without culpable fault, *e. g.*, a foreign vessel; a vessel which has met with a disaster; a vessel in the situation in which the "William Edwards" was upon the claim of the appellee—her Captain had taken the greatest care to procure the very best oil (fols. 144–5, 150–51), and it is insisted by the appellee that after she went to sea it proved to be inferior; a vessel whose windward light should be chilled by the cold of a December night on the coast (fol. 150); and the "Ariadne" owed a duty to herself from which, of course, no fault of the other vessel could relieve her.

The following facts are furnished by the evidence for the appellee, or by the unquestioned evidence for the appellants.

1. The "Ariadne" was a steamer about 200 feet long, very readily handled, and minding her helm with unusual quickness (her witnesses, Hendrickson, fol. 208;

Malloney, fol. 214). She was just out of the Port of New York; the condition of her crew, in such a case, is notorious: from the speed at which she was sailing, she could easily be brought to a full stop in about twice her length—a space of about 400 feet.

Hendrickson, fol. 208; *her captain, Crary, fol.* 229.

This was not an estimate about which there was likely to be a mistake.

The steamer was heading about S. by W. ½ W. (fol. 19). As the brig was close hauled on the wind, and heading about W. N. W. (her wheelsman, Jones, fol. 122), the steamer approached her nearly bow on to her broadside, in the most favorable manner to see the loom of the brig's hull and sails, especially as her sails were close hauled (steamer's wheelsman, fol. 214).

2. The night was overcast; there was, however, no fog or mist (fol. 221), and a vessel could readily be seen without a light, according to the steamer's evidence (fol. 206), one-eighth of a mile; and according to the evidence of the brig's witnesses of the distance at which they did see the brig, as they rowed from her to the steamer after her sails were clewed up, from a quarter to over half a mile.

Captain Ashby says a quarter.

The witness Jones says over a half. In the case of the "Gray Eagle" the Court found that the sails of the "Perseverance" could be seen nearly or quite a quarter of a mile, and for failure to avoid her, though she had no proper lights, the "Gray Eagle" was held liable.

3. There was, therefore, no difficulty in the steamer preventing the collision had she made the attempt as soon as the brig could be seen, though the brig had no starboard light.

4. What was done by the steamer? She had a lookout, but he did not report the brig—did not see her till his attention was directed to her by the officer on deck,

the steamer's second mate, who was in the pilot-house (fols. 197, 209), and then only saw her by turning to her (fol. 206), having for over three minutes been looking in exactly the opposite direction (fol. 209); his vessel ran a mile in seven minutes.

Evidence of Hendrickson, the lookout, fols. 206, 209.

Doubtless the time was much greater. Every consideration induced the man to make the time as short as possible. This comment upon the conduct of the lookout is based upon his own evidence, and this Court is respectfully asked whether it shows that he was "*attentive*," as held by the learned District Judge (The 'Ariadne,' 2 Benedict, 474), especially in view of the decision of this Court, in Chamberlain *vs.* Ward, holding that a reasonable precaution for ocean steamers, when navigating a part of the sea so frequented by other vessels, is to have two lookouts stationed forward, one on each side of the vessel.

This inattention of the steamer's lookout presumed fault on her part, and even conceding the want of a suitable starboard light on the brig, after the steamer's failure to have a vigilant and attentive lookout appeared, the burthen was upon her to show that the collision would equally have happened had the lookout been faithful in the performance of his duties.

It is submitted that the principle upon which the Circuit Judge decided this case can not be sustained. His language is: "Indeed the only ground for recovery, even if the brig was free from fault, would be either that the steamer might and ought to have sooner seen the brig, or that, when she did see the brig, she did or omitted something which she ought not to have done or omitted. On this point the burthen of proof is on the libellants."

A steamer which runs down a sailing vessel is presumed in fault. The burthen is on her.

The Oregon v. *Rocca*, 18 *How., U. S. S. C. R.*, 570.

N. Y. and Liverpool Mail Steamship Co. v. *Rumball*, 21 *Id.*, 372.

5. The steamer's second mate did not meet the requirements of a lookout. He was in the pilot-house, and was charged with other duties. Had Hendrickson not been stationed as lookout, there would have been a total defect in the case for the appellee. What advantage did the steamer derive from Hendrickson, who was not vigilant in attending to his duties? The fact that the second mate was the first to see the brig, demonstrates the negligence of Hendrickson. The brig, when first made, bore nearly ahead from the steamer (fols. 198, 220, 214), the direction in which it was the duty of Hendrickson to look. He admits that he was not looking; was compelled to make this admission, else he must have seen the brig as soon as the second mate. The appellee's evidence leaves no room to doubt that had Hendrickson seen the brig as soon as she should have been seen, had she carried no lights at all, the "Ariadne" would have avoided her without difficulty.

Second Point.—The "Ariadne" says the "William Edwards" could be seen at the distance of an eighth of a mile, without a light. When was she seen? and what opportunity had the steamer's witnesses to see whether the brig had a light or not? The appellee's witnesses have proved beyond a question that the brig was first seen in the very instant of the collision.

1. The brig was built in April, 1865; was on her first voyage (fol. 139). She was new and strong. The "Ariadne" struck with such force as to cut into her five or six feet. The steamer had only been making about eight miles an hour; to what extent could that speed have been reduced—scarcely at all; and yet the necessary measures were taken the instant the brig was sighted by the second mate. But a few seconds could have intervened to the collision.

2. In 400 feet she could have been brought to a full stop. The interval was therefore much less than that. All the "Ariadne's" witnesses agree that the interval was only the few seconds in which the four bells could be rung to slow, stop and reverse, with a second between each.

Hendrickson, the lookout, says the "Ariadne" only ran her length (fol. 210). Pharo, the mate—that he rung the first bell as soon as he saw the brig, and that there was a second or two between the first and second bell, the same between the second and third, which with the fourth was struck as close together as could be, and that the talk which is claimed to establish the want of a starboard light on the brig was meantime (fol. 202). Malloney, the wheelsman, says it was not a second (fol. 214).

3. The instant the brig was seen by the second mate of the "Ariadne," her wheelsman, with the aid of the mate and her captain, put her wheel hard a-starboard. She was quick to mind her helm, would swing a point and a half in a second or two (Malloney, the wheelsman, fol. 214), and she had only swung one and a half to two points when the vessels struck. How many seconds did that take?

Cross-examination of steamer's wheelsman, fol. 214.

4. All on the steamer was in confusion. They found themselves in an instant on top of the brig. Had no time to see how to avoid her; even to tell where first to look for her in the few seconds to the blow. The captain just roused, took one look through his glass, and rushed to the wheel. It is not strange to find the stereotyped excuse that the brig had no light, which merely means that the steamer saw none. Her witnesses use the two expressions as synonymous.

It is obvious they saw no light. After the collision, the green light being destroyed, they failing to see it, were confirmed in their impression that the brig had had no green light; and hence the defence.

Third Point.—The steamer's evidence that the "William Edwards" had no suitable light is improbable and contradictory in itself.

1. The principal witness is her second mate. His version is that in the short interval which he puts at three or four seconds, he asked the lookout first if he could tell which way the brig was heading, was answered, "No, she had no lights;" yet asked two or three times if the brig had a light. Why ask more than once? Why ask at all if, as he says, he saw himself that she had none. And then he called all hands to witness that the brig had no lights! (fols. 201, 202). This improbable statement could be sustained by

   Hendrickson, the lookout, p. 60;
   Malloney, the wheelsman, p. 63;
   Capt. Crary, the master, p. 67;
   Wolff, the fireman, who came on deck, p. 64;
   Ryley, the deck-hand, p. 65;

   all of whom were present at all or a part of it. It is not sustained by one. No other witness pretends that more was said about a light than that to the mate's first call, whether Hendrickson saw how the brig was heading, he answered that she had no light.

2. Again, of the above, the captain, second mate and Malloney were in the wheel-house. The second mate claims the brig was seen one or two points on his port bow, but so near and directly athwart the brig's course how she bore depended on the part of the brig seen. The steamer's stem did hit the green light. Naturally those in the pilot-house could not see the light, the steamer's foremast and all her stays and the furl of her sails being directly in line.

Fourth Point.—It is claimed, therefore, that though those on the steamer did not see the brig's light, their evidence does not disprove that it was burning brightly.

The testimony upon which it is most strenuously insisted that the green light was defective, is that of the pilot of the brig and her lookout, both of whom swear that it was burning, but who pretend that it was smoky and dim.

1. Morgan, the brig's lookout, was examined with the rest of her crew, on reaching New York, after the collision. He testified that the green (blue light) and the red both burnt bright up to the collision (fol. 249). He declined to sign his deposition, went to his home at Mystic, and when the appellants undertook to compel his signature, it appeared that he was in communication with the appellee. The appellants then declined to examine him, and the appellee made him his witness. Under some influence he then testified that his first deposition was untrue, and that the brig's light was dim. Though it was his duty to do so, he admits that he made no report of this pretended dimness, though he knew that the "Ariadne" was coming right down upon the brig, and that her only safety was in her lights. Morgan admits that he could be influenced to lie, and his first statement derives infinite strength from the obvious omission by the appellants to influence him to lie in their favor.

Evidence of Morgan, p. 71.

2. Substantially the same criticism applies to the evidence of the pilot, who says the lights smoked and were dim.

The brig was in charge of a pilot. The appellants felt constrained to examine him in the District Court, with misgivings, suggested by the Morgan affair, which his testimony shows (p. 26), and which its tenor justified. Having called him, the appellants were precluded from contradicting him by his written statement (fol. 81; p. 27).

In the Circuit Court the appellants declined to read his evidence; the appellee then read it against the objection that it should have been retaken by deposition, with the privilege to the appellants then to contradict him by his written statement. The Circuit Judge

overruled the objection, and also held that the appellants had no right to introduce the written statement on the trial, though then first informed that the appellee would make the pilot's evidence testimony in the case.

The case is now, however, wholly changed in that the appellants are not responsible for his testimony.

The answer to it is complete.

(*a*) He was charged with the responsibility of the brig; saw the "Ariadne's" light when she was ten (fol. 74) to twenty (fol. 122) minutes distant; *i. e.*, a mile and a half to three miles; saw that she was bearing right down upon the brig, and yet gave no direction to see that the light he pretended he had noticed to be smoking was burning.

His evidence, fols. 81, 82.

On the contrary, in view of a possible collision, what he told the brig's mate was (fol. 127): "As long as you keep a good light, the steamer will keep clear of you."

(*b*) Self-preservation and duty combine to establish that, on the pilot's part, no so obvious precaution was omitted.

Fifth Point.—The evidence on the part of appellants in favor of the brig's lights is conclusive.

1. The presumption is that she had a good green light; she had the best oil and appliances.

Evidence of Hippolyte Dardonville, fol. 76.

2. Oakley, the man on the brig's deck (fol. 107,) and Morgan, the other man on deck, when first examined, swore the lights were bright. Williams, the brig's mate (fol. 87), and Jones, the wheelsman (fol. 123), testify to the same effect. The green light was trimmed and replaced only twenty minutes before the

collision, and it then burned so that you could see it a great distance.

3. Why was not the light seen from the steamer when first replaced? Then it was bright. This was only about twenty minutes before the collision.

4. The red light which was not injured by the collision was burning bright, and as the brig luffed about after her crew got on the "Ariadne," it was seen from her. It got upset in the small boat when it was taken to the "Ariadne" subsequently, and one of her witnesses testified it was smoky. The appellee, however, took forcible possession of it, retained it to the trial in the District Court, and then produced it, when it showed for itself that though lapse of time had made it a little dirty, it was wholly free from smoke (fol. 77).

Sixth Point.—When the brig's captain reached the steamer's deck he asked her captain what kind of a lookout he could have to run them down with such lights set, referring to the red light then burning; the captain's answer was, "I don't see your green light." The stem of his vessel had smashed it; but undoubtedly the fact that the green light had not been seen, the explanation not being known, started the idea that the brig had no green light.

The "Ariadne" not only destroyed the "William Edwards," but with a perfection of injury also destroyed the conclusive evidence of her fault which the preservation of the green light would have afforded.

Seventh Point.—The appellants respectfully insist that the brig's green light was burning; and that whether so or not there should be a decree in their favor.

JNO. E. PARSONS,
For the Appellants.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

THE STEAMER ARIADNE, her Engines, &c., CHARLES MALLORY, Clt. and Appellee,

ads.

ARCHIBALD M. PENTZ, and others, Lib'ts and Appellants.

Brief and Points of the Appellee.

This is an appeal from a decree of the Circuit Court for the Southern District of New York, affirming the decree of the District Court, whereby the libel was dismissed with costs. The libel was filed to recover damages arising from the loss of the appellant's brig *William Edward* and her cargo, occasioned by a collision between her and the steamer *Ariadne* at sea, on the night of the 13th December, 1865.

The libel states (*fol.* 16) that on that day at about 11

o'clock P. M., the brig, being on a passage from Havre to New York, had arrived off the port of New York, and had taken a pilot, and was on the open sea, about 12 miles from Barnegat, and 8 miles from the land, steering for New York, when the steamer was seen approaching, being then about three miles distant; that the brig was closehauled, and having all her lights displayed, kept her course, but the steamer approached, "till finally, apparently without noticing the brig or her lights, or the hails from her which were given by the look-out on the brig, she came in collision with the brig, striking her on the starboard quarter, with such violence" that she commenced filling, and in less than an hour she sunk.

The libel is exceedingly defective in its allegations. It does not comply with rule 23, in that it does not state the course or the strength of the wind, nor the tack which the brig was on, nor how she was heading, nor the character of the night. No exception was taken to the libel for these causes, but an answer thereto was filed.

The answer admits the collision, but denies that it occurred through the fault of the steamer, and avers that it arose from the fault of the brig in not then and there carrying a proper starboard green light, in consequence of which she was not and could not be seen sooner than she was, nor in time to enable the steamer to keep out of her way, although every effort was made to do so, (*fols.* 44–58).

The record shows, and about this there is no dispute, that the brig was on a voyage from Havre to New York, with a cargo of wines and liquors; that the wind was *N. or N. N. E.*, blowing a whole sail breeze; that the brig was on her port tack, with her starboard side towards the steamer, and going at the rate of four or five knots.

The steamer was on one of her regular passages from New York to New Orleans, with freight and passengers. She had no sails set, was heading on her true course of *S. by W.* $\frac{1}{4}$ *S.*, and running at the rate of about seven or eight knots. The night, though cloudy and dark, was favorable for seeing vessels' lights.

The brig was not discovered until the steamer was so near to her that it was impossible to keep out of her way, and she was struck on her starboard side abaft the main chains, and sunk.

The question was, which vessel was in fault? and that turned upon the further question, whether or not the brig had a proper green starboard light—it being insisted, on the part of the steamer, that she had not.

The District Court decided that "the brig did not have burning, at the time of the collision, such a green starboard light as the statute requires," and that this fault led to the collision, and cast the burden on her to show that the steamer was in fault, and also that the collision arose in consequence of such fault, which she had failed to do, and the libel was accordingly dismissed, with costs. (*The Steamer Ariadne*, 2 *Benedict's District Court Rep.*, 472.)

Upon appeal to the Circuit Court, the decree dismissing the libel, with costs, was affirmed. Judge Woodruff, in his opinion, says: "After a careful study of the evi- "dence in this case, * * I cannot resist the conclu- "sion that the misfortune which befell the vessel of the "libellants was due to the fact, that at the time of the "approach of the *Ariadne*, the starboard or green light "of the brig had gone out, or so nearly so that it could "not be seen from the steamer. * * * The conclu- "sions of the District Court were correct, and the libel- "lants have failed to put the steamer in fault." (*The Ariadne*, 7 *Blatch. R.*, 211.)

POINTS.

First.—The Courts below concurred upon the questions of fact that the brig was in fault and that the steamer was not. The case, therefore, comes before this Court with every presumption in favor of the correctness of those decisions. (*The Quick Step*, 9 *Wall.*, 665.)

Second.—Without relying, however, upon such presumption, the weight of evidence clearly establishes the fact that the brig was solely to blame in not carrying a proper starboard green light, and that she was the sole, culpable cause of the collision.

I. The statutory rules of navigation imposed upon the two vessels correlative duties. While it was the duty of the steamer to "keep out of the way" of a sailing vessel, it was the duty of the latter not only to keep her course, but also to carry signal lights arranged in the same way and of the same power as prescribed for steamers, which were to be "of such a character as to be visible of a "dark night, with a clear atmosphere, at a distance "of at least two miles." (13 *Stat.*, 59, *Arts.* 3, 5.)

II. The testimony shows that the brig did not have such a green starboard light (which was the side towards the steamer), and that in this respect she was sailing in violation of the rules of navigation adopted for the purpose of preventing collisions. Those rules required her to carry as good a green light and one that could have been then and there seen as far from the steamer as the steamer's lights were seen from her; which, according to the averment in the libel and the testimony of the libellant's witnesses, was from two to three miles. (*Fols.* 16, 92, 112.)

III. But in fact, the starboard green light, if burning at all, was so dim that it could not have been then and there seen over 200 feet. (*Fols.* 240, 241.)

(1.) The witnesses, who were on the deck of the brig before and at the time of the collision, and who pretend to speak of the light as being good,

did not, in fact, see it, nor could they have seen it from where they were standing for at least a half an hour before the collision. But even these witnesses condemn it as being insufficient.

(*a.*) *Williams*, the mate, who was standing on the top of the poop deck with the pilot and near the wheelsman, on his direct examination, says (*fol.* 87) the brig's lights "were burning bright at the time," but his cross-examination disclosed the fact that he did not know that they were so burning, for before and after the steamer was reported he and the pilot were standing "close to the man at the wheel * * * about twenty feet abaft the main rigging * * *abaft* the light" (*fols.* 91, 94, 97) where it was impossible for him to see the light, screened as it was (*fol.* 96), and so the witness, Jones, who had the wheel, testifies that (*fols.* 131, 132) *he* could not see the light, and that neither the mate or pilot could "see either light from where they stood any more than he could." The mate, therefore, fails to establish the sufficiency of the light; on the contrary, as will appear hereafter, he testifies to facts going to disprove it.

(*b.*) *Jones*, the witness last referred to and who was at the wheel from 10 P. M. up to the collision on his direct examination, says (*fol.* 123) the lights were burning "so well that you could see them from a great distance * * from two to three miles." But he did not know whereof he so testified for on cross-examination, he says (*fol.* 131) he could not see the lights from where he stood at the wheel, and when asked how then he knew that they were burning, he says: "I saw the man when he fetched them out of the cabin; when he came up out of the

cabin I could see it in his hands;" this was a half an hour before the collision (*fol.* 95) and the light then "flared up" very much. (*Fol.* 81.) This witness also fails to establish the sufficiency of the light.

(c.) *Oakley*, who had been on look-out until 11 o'clock, says (*fols.* 105, 106) "the lights were burning at the time of the collision; they were burning at the time the steamer was reported and were bright." He also testified to what he did not know, for after he left his station as look-out he was where he could not have seen the starboard light. He says (*fol.* 109) when he left his station at 11 o'clock, he went down on the main deck and "went to the leeward on the port side, to the leeward of the forecastle" where he was when the steamer was reported (*fol.* 111) and he finally admitted that when he said the lamps burned bright he meant while he was "on the look-out and observed them." (*Fol.* 118.) This witness also fails to establish the sufficiency of the light.

(d *Mayhew*, who was the pilot and had been on the quarter deck an hour before the collision don't speak of the light, except as it appeared when in the mate's hand as he came out of the cabin after having fixed it, which was half an hour or so before the collision when the light was flaring, and he says he told the mate if it burned that way "it would smoke and be dim." (*Fols.* 80, 81.) This witness clearly condemns the light as being unsufficient.

(e.) *Morgan*, who went on look-out at 11 o'clock, says: (*Fols.* 240, 241.) "When I was on the "look-out I noticed our starboard light, but

" not until the *Ariadne* was very near to us ; I " stepped to the side of the brig, thinking that " our lights might not be burning and that the " *Ariadne* might therefore run into us, and " there I looked at our starboard light ; the " light was very dim ; I was, I should judge, " fifty feet from the light when I looked at it " and could see it plainly. As the light was " then burning, I should not think it could be " seen *over two hundred feet.*" This witness also condemns the light as being insufficient.

The master and the remaining officers and crew were below at the time of the collision, and did not testify as to the condition of the light before or at the time of the collision. (*See fols.* 139, 162, 173, 183, 189.)

(2.) The witnesses who were on the steamer, without exception testify that there was no green light visible.

(*a.*) *Pharo,* who was second mate of the steamer and in the pilot house looking out of the window in front, says : (*fols.* 193, 199), when he first saw the brig, he could not tell how far off she was, but she was not over $\frac{1}{8}$ of a mile distant ; that he could not tell how she was heading ; that she "had no light," that there was nothing to prevent his seeing a light if there had been one. If there had been a green light, he could have told which way she was heading, there was nothing to prevent his seeing her green light if there had been one ; that he asked the man on the look-out, "if he could tell how she was heading ;" and he answered that he saw her but "could not tell how she was heading as she had no light ;" that he asked him again if he saw any lights. The testimony of this witness shows that she had no

light, and that the attention of the look-out was drawn to that fact.

(*b.*) *Hendrickson*, the look-out spoken of by the last witness, and who was stationed forward of the windlass, says (*fols.* 205, 206), "I saw the "brig; the second mate saw her first; I was "just looking off the starboard bow at the "same moment; he asked me if I saw that "vessel; the same moment I turned and saw "the vessel; and I said, yes, sir; he asked me "if I could see where she was heading; I told "him, no, sir; I could see no light, and could "not tell how she was heading; she had no "lights on her; I could see no lights; there "was nothing between myself and that vessel "to prevent my seeing." If there had been a green light there, he says he should have seen it.

(*c.*) *Malloney*, sometimes erronerously called Mallory, by other witnesses, who was at the wheel of the steamer, says (*fol.* 212), his attention was first attracted towards the brig, by hearing the second mate ask the look-out if he saw the vessel ahead, but did not hear the answer from the look-out; that he looked but could not see her; that he afterwards saw her coming across his bows; that "she had no light up, I could see no light on her at the time; I saw no light on her up to the time of the collision." He says there was nothing to prevent his seeing the light if there had been one there; that he could have seen it better than the man on the look-out, as he stood higher than the look-out.

(*d.*) *Wolff*, who was in the engine room, says (*fols.* 217, 218), hearing a bell to slow, the En-

gineer told him to go up and see what it was; that he came out on the starboard side, then went to the after part of the pilot house and saw the brig "coming right around the bow of the steamer. I could not tell how far she was off. I walked a few steps further forward, and she struck. I saw no light on her whatever, up to the time of the collision."

(*e.*) *Ryley*, who was on deck, between the windlass and the pilot house, on the port side, walking fore and aft, says (*fols.* 220, 223), his attention was called to the brig by hearing the second mate ask the look-out, "if he saw that vessel"; the look-out said he did. I then looked up "and saw her about two points on our port "bow * * about an eighth of a mile dis- "tant * * * could not then make out "which way she was heading. I could just see "the loom of the vessel enough to make out "that it was a vessel. *I saw no light upon her.* "There was nothing to obstruct my view; the "decks were perfectly clear, and if there had "been a light upon her, I certainly could have "seen it."

(*f.*) *Crary*, who was master of the steamer, and in his room before the collision, says (*fol.* 228), his "attention was first called to the brig "by hearing the officer of the deck ask the "look-out if he saw which way that vessel was "heading; I jumped immediately into the "pilot house and took my night-glass, which "was right at hand, in the pilot house, and saw "the vessel, and that she was standing across "us to the northward and westward; *there was* "*no light to be seen on her;* I should say she "was from 100 to 150 yards off at the time I "first looked at her."

IV.—Upon comparing the testimony of the witnesses on the part of the brig and those of the steamer, in reference to the want of a proper light on the brig, it will appear that there is no material contradiction between them, and that the testimony to the fact that she did not have a light, is clear and conclusive. Even if the testimony be regarded as contradictory, still, in the absence of any special reason to the contrary, the witnesses from the steamer are entitled to the most credit, because there was nothing to obstruct their view, and the light, if any, was intended to be seen by them, and it cannot properly be supposed that if there had been a green light on the brig they would not have seen it.

V.—Besides this, there is other testimony against the character and quality of the lights that night, which sustains the witnesses on the part of the steamer in their statement that she had no starboard light.

(1.) The oil used was not good. On the night of the collision, and for several nights previous thereto, the lights had required fixing to keep them burning; and even the starboard light had been taken down and fixed during the watch in which the collision occurred.

The *pilot* says (*fol.* 90) the lights were taken down *twice*, to trim them; they were smoked when taken down.

Olsen says (*fol.* 186): "The lamps never went "out altogether; they would get so they would "not burn well, and then we took them down and "trimmed them, and this would occur two or "three times in a watch."

Williams says (*fol.* 95), he took these lamps down and trimmed them; and the pilot says (fol. 81), when he went by with the green light, after having trimmed it, he told Williams that the light flared up, and "if it burned that way it would

smoke and be dim. He told me it was good enough."

Morgan, who had the wheel from 8 until 10 that night, says (*fols.* 239, 240): "The binnacle light went out once while I was at the wheel, and was pricked up to prevent it going out again." That the lights had troubled them for several nights. The binnacle light was supplied from the same oil as the signal lamps. (*Fol.* 164.)

(2.) The mere fact that the red light was seen after the collision affords no presumption that the green light was, before that, properly burning; especially in view of the positive testimony to the contrary; moreover, the red light was on the lee side of the ship, and thus protected from the wind and cold.

(3.) Nor is there any favorable inference to be drawn, as to the green light, from the fact that it had been taken down and fixed, some half an hour before the collision. The inference is, rather, that having become previously dim, it was not reliable, which, with the fact testified to by the pilot (*fol.* 81), that it flared when brought up, and was in a bad condition, is sufficient to condemn it.

(4.) Even if it had not gone entirely out, yet it burned so dimly that it could not have been seen, according to the testimony of Morgan, the look-out, 200 feet, and did not therefore answer the requirements of the law. (*Chamberlain* vs. *Ward*, 21 *How.* 548.)

Third.—The want of a proper light casts upon the brig the burden of showing, affirmatively, that the col-

lision did not arise from that cause, and, that it arose from some positive fault on the part of the steamer, of which there is no proof whatever. The steamer was not in fault.

I. She had a competent look-out, properly stationed forward, before the windlass, who had no other duty to perform but to look out for and report approaching vessels, and who was faithful and vigilant in the discharge of that duty. (*Fols.* 205, 206, 212, 219.)

(1.) The mere fact that the mate saw the brig first does not show want of vigilance on his part. The mate occupied as favorable position for seeing the brig as soon as she became visible, as he did. The mate stood in the pilot house, with his head and shoulders out of the front window, looking out for vessels. (*Fol.* 199.)

(2.) The testimony shows that if the brig had had a proper light it could have been seen then and there a distance of two miles; under such circumstances the look-out was not called upon to exercise extraordinary attention by looking ahead and off each bow in quick succession, and in itself it is no evidence of inattention that for a short interval before the mate spoke to him he had been looking over the port bow. At the speed the steamer was going (only about eight knots), he might have looked three minutes off that bow and still have seen a light a sufficient distance to have duly reported it, and enabled the steamer to keep away from it. A proper light visible two miles could have been seen from seven to eight minutes. He had a right to assume that other vessels if in their neighborhood were acting in obedience to the usual regulations and direct his attention accordingly.

(3.) Moreover, his duty was to look for *lights*, and he should not be considered as inattentive even if he did not discover the brig herself at the earliest possible moment. If he had been continually looking in the direction she was approaching, there is no evidence to show that she could have been seen or her course determined a moment sooner than she was; on the contrary, the testimony shows that she was discovered as soon as it was possible to see her.

(4.) The appellants attempted to prove that a vessel without a light might have been seen then and there from one-half to three-quarters of a mile, and that there was fault on the part of the steamer in not seeing the brig sooner, even though she had no light. The testimony of the witnesses on this point is vague, uncertain and wholly unreliable, while the witnesses on the steamer, who had no light shining in their eyes from the approaching brig or otherwise, testify distinctly that she could not have been seen *more* than one-eighth of a mile, and that she was seen at the earliest possible moment, and when no part of her was visible, and nothing but the "loom" could be seen. (*Fol.* 228.)

(*a.*) *Captain Crary* says (*fol.* 228) she was 150 to 200 yards distant when he first saw her with his night-glass, which was but a moment after the mate saw her, and that her heading could not then have been determined by the naked eye.

Riley says (*fol.* 220) when the mate spoke to the look-out he could just see the loom of the brig, and he judged her to be not more than one-eighth of a mile distant.

(*b.*) The opinion of the witnesses on the brig as

to the distance a vessel could be seen without a light was based upon the character of the night, at the time the brig sunk, which was from one-half to three-quarters of an hour after the collision, and there is no evidence that it was of the same character then as at the time of the collision. Moreover, they judged from the distance which they supposed they were from the brig when she sunk. She lay half a mile from the steamer, and the last they saw of her was when they were about half-way from her to the steamer (*fol.* 192.) They knew where to look for her, and their natural curiosity to know her end aided them in seeing her farther than one merely looking out could have seen her.

(5.) The Courts below concurred in deciding that the appellants had failed to show "that the steamer could, with proper vigilance, have seen the brig in proper season to have avoided her." Judge Woodruff very properly says: "Vessels "have a right to assume that other vessels, if "in their neighborhood, are acting in obedi- "ence to the Statute regulations; and when the "negligence of the sailing vessel, and her failure "to comply with the Statute requiring her to "bear a light which can be seen at a distance of "two miles, have led the steamer into danger of "collision, it is not for the sailing vessel to insist "that, by more than usual vigilance, she might "nevertheless, have been discovered at a few "yards greater distance, and to claim contribu- "tion on that ground. In this case I think there "is a failure to show that the brig could have "been seen from the steamer sooner than she "was." (*The Ariadne*, 2 *Benedict, R.* 472; *S. C.* 7, *Blatch* 211.)

II.—Upon so discovering the brig the steamer was stopped and backed as quickly as possible to avoid a collision with her.

(1.) *Pharo*, the second mate, says (*fols.* 198–201): "When I saw the brig I asked the man on the look-"out if he could tell how she was heading as she "had no lights. * * I then rang the bell to slow "her; sung out to him to ask if he saw any "lights, and slowed and backed her at the same "time. Our propeller was backing at the time "of collision."

Hendrickson, the look-out, says (*fol.* 20): When he answered the mate that he could not tell how the brig was heading, he "heard the bell to the "engine, and could feel the engine stop. This "was at the same moment that I answered the "second mate that I could not see how the brig "was heading;" and on cross-examination (at *fol.* 207) he says it was at the moment he turned to look for the brig, "that one bell rang, so that I did not see the brig until our bell rang and I felt the ship stop."

Capt. Crary says (*fol.* 228), he was in his room about four feet from the man at the wheel and six feet from the second mate in the pilot house; that upon his hearing the officer ask the look-out if he saw which way the vessel was heading he jumped immediately into the pilot house, and that "prior to this the bells had been rung to slow and to stop." On cross-examination he says (*fols.* 228, 229): "I heard the first bell ring "to slow. The bells to stop and reverse fol-"lowed in very quick succession as could be. I "heard the pull of the bell. These orders were "obeyed immediately. I can't say which came "first, the first bell or the question from the offi-"cer of the deck to the look-out; this was all "the work of an instant; we struck the brig be-

"fore we could overcome the headway of the "*Ariadne.*"

Rankin, the engineer, says (*fol.* 215): "The first I heard was four successive bells; the signal to back strong is two successive bells, making four bells in all. I did obey them as quick as possible. * * The engine, at the time of the collision, was backing hard."

(2.) There is no contradictory evidence showing, or even tending to show, that the steamer was not stopped and backed as quickly as it was possible.

III. The steamer's wheel was put to starboard, so as to pass under the brig's stern as soon as it was ascertained how she was heading (fol. 228). Until that could be determined, it was not proper to move the wheel either way. (*The Louisiana*, 21 *How.*, 1; *Nelson* v. *Leland*, 22 *do.*, 48.)

IV. The steamer was running at a moderate and proper speed. She was not running over 8 miles an hour, which, in a night favorable, as all agree, for seeing lights, was perfectly safe, for at that speed she could have kept out of the way of any sailing vessel then and there carrying a proper light. She was under no obligation to slacken such speed to avoid vessels then and there unlawfully sailing without signal lights. But no question has been hitherto made by the appellants upon the speed of the steamer.

Fourth.—It is therefore respectfully submitted and insisted that there is no error in the decree appealed from, and that the same should be affirmed with costs.

E. H. OWEN,
Adv. for Appellees.